SUPREME COURT OF THE UNITED STATES.

No. 238.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, CLAIMANTS OF THE BARQUE NEWSBOY, APPELLANTS,

vs.

HUGH COYNE, OWNER OF THE SCHOONER WHITE CLOUD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 Circuit court of the United States for the eastern district of Michigan.

HUGH COYNE, libellant and appellee,
vs.
JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, claimants of the barque Newsboy, &c., appellants.

Pleas at the city of Detroit, in the State and eastern district of Michigan, before the judge of the circuit court of the United States for the eastern district of Michigan, of the term of June, in the year of our Lord one thousand eight hundred and sixty-four.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Be it remembered, that on the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-four, in the circuit court of the United States for said district, before the judge thereof then there, came
2 James R. Bentley, Jesse Hoyt, and Charles Clark, claimants of the barque Newsboy, &c., appellants, and filed therein a transcript in appeal from the district court of the United States for the eastern district of Michigan, in the words and figures following, that is to say:

3 In the district court of the United States, in admiralty.

To the Hon. Ross Wilkins, judge of said court:

The libel of Hugh Coyne, sole owner of the schooner White Cloud, against the barque Newsboy and Edward Stanford, her master, alleges:

First. That the said schooner White Cloud and said barque Newsboy are respectively of the burthen of 20 tons and upward, and enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and place upon the lakes and navigable waters connecting said lakes, and that said Hugh Coyne was at the time the cause of action hereafter mentioned accrued the sole owner of said White Cloud, and at same time said Stanford was master of the Newsboy.

Second. That on or about the 12th day of November, A. D. 1862, the said schooner White Cloud was on a voyage from Buffalo to the port of Chicago in ballast, and had arrived off Manitowoc or thereabouts; the she was then tight, staunch, well ballasted, in good trim, with all her equipments in
4 good order, with a full compliment of officers and crew, and at their proper places and attentive to their duty, keeping watch and ward for the safe navigation of their own vessel, and so continued until after the occurrence of the damages hereafter specified.

Third. That about the hour of 7 p. m., the wind being variable and baffling and about SW. by W., the said White Cloud was proceeding on her voyage and steering to the southward on the starboard tack, with wind well forward of the beam, carrying a bright red light properly displayed and burning; that the officer of the deck made the white light of an approaching vessel, which afterwards found to be the Newsboy, on the starboard bow; that as the vessels approached the White Cloud was on the starboard tack, "by the wind," and the Newsboy had the wind free over the port quarter; that the Newsboy was so carelessly, negligently, and unskillfully managed that by the want of care and watchfulness and skill on the part of the officers and crew of said Newsboy she ran in and upon the said White Cloud, and did her great and serious damage, compelling her to proceed to port in order to repair; that the damage to the White Cloud was the just and full sum of about thirty-two hundred dollars, and in order to make said repairs the vessel was delayed and detained from her accustomed voyage and
5 business for the space of about twenty-five days; that the value of the services of said vessel for said time, (and she could earn and her

time was worth the sum of one hundred dollars ($100) per day,) and for the said twenty-five days' delay the sum of at least about twenty-five hundred dollars; that during the said time her owner was obliged to pay, and did pay, for wages and board of crew the sum of one hundred and fifty dollars, and that the total amount of said damages is and was the sum of fifty-eight hundred and fifty dollars; that the said Newsboy is responsible therefor, and by the rules of law enforcable and cognizable in this court the said libellants has a lien therefore upon said Newsboy.

Fourth. That said collision is not, and cannot be, attributated to the fault, want of skill, or carelessness of the White Cloud, her officers and crew, but is solely attributable to the said Newsboy, her officers and crew.

Fifth. That all and singular the premises are true and within the jurisdiction of this hon. court, where libellant prays that process in due form of law may issue against the said barque Newsboy, her boats, tackle, and furniture, and against Edward Stanford, her master, and that this court would pronounce for said damages and costs, and otherwise rights and justice administer.

H. COYNE.

6 STATE AND DISTRICT OF MICHIGAN:

Hugh Coyne, being by me duly sworn, doth say that he has heard read the above libel, and knows the contents thereof, and that the same is true, as he verily believes.

H. COYNE.

Sworn and subscribed to before me, at the city of Detroit, May 25th, 1863.
JNO. WINDER, *Clerk.*

District court of the United States, eastern district of Michigan.

The claim and answer of James R. Bentley, Jesse Hoyt, and Charles Clark, owners of the barque Newsboy, and the answer of Edward Stanford, her master, to the libel of Hugh Coyne against the said barque, her tackle, &c., and the said Stanford.

The said respondents say:

First. That the said James R. Bentley, Jesse Hoyt, and Charles Clark are, and during all the times herein mentioned were, the owners of the said barque, her tackle, apparel, and furniture.

Second. That the said respondents have no knowledge of the truth
7 of the allegation in the first article of said libel contained, that the said libellant was at the times or at any time in said libel mentioned the owner of the schooner White Cloud, except what is derived from said libel; and they therefore deny that allegation. They admit the other allegations of the said article to be true.

Third. That said respondents have no knowledge of the truth of any of the allegations contained in the second article of said libel, (except that hereinafter admitted,) save such knowledge as they have derived from said libel; and they therefore deny each and every allegation in the second article of said libel contained, except that said respondents admit that at the time of the collision hereinafter mentioned the said schooner was in the vicinity of Manitowac, but whereabouts the said respondents are unable precisely to state.

Fourth. The said respondents, on information and belief, deny each and every allegation contained in the third article of the said libel, except such as are hereinafter specifically admitted.

Fifth. The said respondents deny each and every allegation contained in the fourth article of the said libel.

8 Sixth. The said respondents deny each and every allegation contained in the fifth article of the said libel, except such as herein admitted to be true.

The said respondents, further answering, say:

Seventh. That heretofore, and on the twelfth day of November, one thousand eight hundred and sixty-two, the said barque, she being then tight and staunch and well manned and provided, was engaged in the performance of a voyage, in the pursuit of her business of commerce and navigation, from Milwaukee, in the State of Wisconsin, to Buffalo, in the State of New York, laden with a cargo of wheat; that at about seven o'clock of the evening of that day the said barque was upon Lake Michigan, to the northward and eastward of Manitowoc, and was upon a north-northeast course, and kept upon that course until the change thereof hereinafter mentioned; that the wind was about west by south then and until the collision hereinafter mentioned; that the said barque was showing a white light well and properly displayed, and so continued to shew that light until the collision happened; that the barque during all said time had proper lookout; that at the time last aforesaid a red light was made from the barque, and about
9 three points on her port bow, which afterwards proved to be upon said schooner; that afterwards and before the collision a torch-light was displayed over the port bow of the barque; that after the light of the said schooner was so as aforesaid made the said schooner changed her course to the eastward and so as to run across the bows of the barque; that the wheel of the barque was thereupon put hard aport for the purpose of avoiding the collision, and the master of the barque called out to the schooner to put her helm down and luff; that a collision soon after followed, which collision is the same referred to in the said libel, and happened without any fault or negligence upon the part of the barque, and entirely by the fault and negligence of the schooner and of her officers; and, among other things, for the reasons that the said schooner before said collision shewed a wrong light, had no good or sufficient lookout, and improperly changed her course, and that by reason of the premises the said owners of the barque sustained great damage.

And hereupon the said respondents pray that the libel of the said libellant may be dismissed with costs, and that said respondents may have a decree for their costs in the premises, and may have such further or other
10 or further and other order, relief, or *or* decree in the premises as may be proper.

DOUGLAS & ANDREWS,
Proctors for Respondents.

GEO. B. HIBBARD, *Advocate.*

NORTHERN DISTRICT OF NEW YORK, *City of Buffalo, to wit:*

James R. Bentley, being duly sworn, deposes and says that he resides in the city of Buffalo, and is one of the respondents named in the foregoing answer, and that the said answer is true, as he verily believes.

JAS. R. BENTLEY.

Subscribed and sworn before me this 18th day of August, 1863.

P. G. PARKER, *U. S. Commissioner.*

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

The President of the U. S. of America to the marshal of the eastern dist. of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United

States for the said eastern district of Michigan on the 25th day of May,
11 in the year of our Lord one thousand eight hundred and sixty-three, by Hugh Coyne against the barque Newsboy, her boats, &c., and Edward Stanford, her master, and claiming the sum of about five thousand eight hundred and fifty dollars, ($5,850,) caused by damage to the schooner White Cloud by the said Newsboy, on or about the 12th day of November, A. D. 1862, for the reason and causes in the said libel alleged and mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said Newsboy or vessel, her tackle, &c., may be cited in general and special to answer the premises, and that all proceedings being had, that the said Newsboy or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said Newsboy or vessel, her tackle, &c, and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the said eastern district of Michigan, on the first Monday of July next, at ten o'clock in the forenoon of the same day, (if the same shall be a
12 day of jurisdiction; otherwise, on the next day of jurisdiction thereafter,) then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Ross Wilkins, judge of the district court of the United States for the eastern district of Michigan, at the district court-room, in the city of Detroit, in said district, this 25th day of May, in the year of our Lord one thousand eight hundred and sixty three, and of the independence of the United States of America the eighty-seventh.

JNO. WINDER, *Clerk.*

EASTERN DISTRICT OF MICHIGAN *ss:*

By virtue of the within writ, on the 25th day of May, A. D. 1863, I seized the within-named barque Newsboy, her boats, tackle, apparel, and furniture, and now have the same in my custody to await the further order of the court in the premises.

CHARLES DICKEY, *U. S. Marshal,*
By JAMES HENRY, *Deputy.*

Ship-keeper fees, $5 00.

13 UNITED STATES OF AMERICA, STATE OF WISCONSIN,
City and County of Milwaukee, ss:

To all people to whom these presents shall come or may concern I, Cyrus Child, a public notary in and for the State of Wisconsin, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Milwaukee, send greeting:

Know ye that on the 14th day of November, in the year of our Lord one thousand eight hundred and sixty-two, before me, at my office, at 3 o'clock p. m. appeared Edward Stanford, of the bark called the Newsboy, of East Saganaw, burthen 575 tons, and noted in due from of law with me, the said notary, his protest, for the uses and purposes hereinafter mentioned; and now at this day, to wit, the day of the date hereof, before me, the said notary, at the city of Milwaukee aforesaid, again comes the said Edward Stanford, and requires me to extend his protest, and together with the said Edward Stanford also come W. Abel, 1st mate, Christopher Mason, 2d mate, and James

Smith, seaman, belonging to the aforesaid bark, all of whom, being by me duly sworn, voluntarily, freely, and solemnly do declare and depose as follows, that is to say, that on the 12th day of November inst., at 8 o'clock a. m., the above-named appearers, in their several capacities aforesaid, set sail and departed in and with the said bark Newsboy from the port of Milwaukee,
14 Wis., having on board the said bark a cargo of 21,000 bushels wheat, and bound for the port of Buffalo, State of New York; that the said bark was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualed, appareled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake. At 8 o'clock a. m. towed out of Milwaukee River to the lake by tug W. K. Muir, wind W. SW. At 10 a. m. wind west, vessel's course nearly north, keeping the land close aboard. At 5.30 p. m. stood N.NE.; wind west by south; a nice breeze. At 6. 30 p. m. Manotowoc light bore west, Twin Rivers northwest half west. From this we took departure for the Mannitou Island, still steering north-northeast. At a little before 7 o'cl'k p. m. the captain, who was aft, saw a red light to windward, about three (3) points on the port bow, and about 2½ to 3 miles off. Captain went forward on the top-gallant forecastle to watch l't, and after being there a few minutes, the second mate came forward and asked captain if he saw the vessel to windward; captain replied he was watching it, and both could see it was a fore-and-aft schooner, heading about south by west or south by west ½ west. Could see her lights; her head light was a good one; could also see cabin lights in her port side. Captain remarked "She is all right, and we are going well clear of each other," and told the second mate to show her our torch-light and let her see our position. It was lighted and put over our port
15 bow. While that was burning could not see the other vessel. Captain ordered the light put out, and as soon as it was done saw the vessel coming right straight for us; could see her starboard side and also her cabin light on her starboard side. She was steering, as near as we could tell, southeast. Captain exclaimed "Oh, my God, that vessel is coming right into us." Could not get clear of her; if we had put our helm down we should have met her. Captain ordered our wheel hard aport, and called to the schooner, as loud as he could, to put their helm down and luff, but to no purpose. Captain jumped off the top-gallant forecastle and sung out to the crew to go aft and get out of the way. Captain then went aft to his compass, which, though in his room, was so arranged that it could be seen from the deck. At ten minutes before seven (by our time) the two vessels collided. We were heading northeast by east, and the other vessel (we did not find out her name) was heading, as near as we could tell, east-southeast, straight across the lake. We were going about 9 miles an hour, with our wheel still aport, and we came together pretty hard. After the collision we swung around, (the schooner was then alongside,) and jibed our fore-and-aft canvass till the square canvass was brought aback, when the schooner got clear of us and steered to the eastward. Cleared up top-gallant sail and main gaft top sail; found everything forward was carried away but our bowsprit, including bobstays, forestays, jibboom, stem, and cutwater. The mate was
16 ordered to sound the pumps, and found the vessel made no water. Filled away on the starboard tack a good rap full, heading south by west; could not keep very close to the wind, as the bark would not steer well. Had our sails been in good shape, could have steered south-southwest. At 7.40 p. m. broke off to south by east and went in stays, and steered for land, heading northwest by west. At 8.30 p.m. came up to west-northwest; wind light from southwest. Steered in on that tack until we sounded 7½ fathoms of water, when we came to our anchor at 9 p.m., Monnotowoc light bearing southwest and distant about 9 miles. Lowered away the

boat and examined the condition of the bark forward; found she was too badly damaged to proceed on her voyage with safety; went to work and heave in all the wreck. At 1.30 p. m., on Thursday, November 13th, got everything aboard but the bobstays, which we had to leave till the next day, on account of the sea being too rough to work in the boat any longer. Set anchor watch, and the men turned in; wind light from s'west, and at 5 a. m. have up anchor and made what sail we could, with a light breeze from W. n'west; I steered back for Milwaukee. Made very slow progress from 10 a. m. until one p. m.; wind light and varyable. At 2 p. m. wind freshened from S. s'east; worked short tacks along the land, which we did not care to leave, as it looked like a blow, and we could not have kept the vessel on a wind, and did not want to run back. At 3 p. m. spoke propeller Hunter, bound to Milwaukee, and requested her to tow us. They would not,
17 but said they would send a tug for us. From 5 p. m. until midnight calm and light variable winds. After midnight, Nov. 14th, (Friday,) light wind from north and snow. At 7 a. m. wind increasing and clear weather. At 8 a. m. inside Milwaukee Bay; took tug Muir and was towed into Milwaukee.

And the said master further says that as all the damage and injury which already has or may hereafter appear to have happened or occured to the said bark or his said cargo has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said bark Newsboy, or default of him, this deponant, his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value as of right shall appertain. And thereupon the said master doth protest, and I, the said notary, at his special instance and request, do, by these presents, publicly and solemnly protest against winds, weather, and seas, and against all and every accident, matter, and things had and met with as aforesaid, whereby or means whereof the said bark Newsboy, or her cargo, already has or hereafter shall appear to have suffered or sustained damage or injury; for all losses, costs, charges, expenses, damages, and injury which the said bark, or the owner or owners of the said bark, or the owners, freighters, or shippers of the said cargo, or any other person or persons interested or concerned in either, already have or may here-
18 after pay, sustain, incur, or be put unto, by or on account of the premises, or for which the insurer or insurers of the said bark or her cargo is or are respectively liable to pay or make contribution or average according to custom or their respective contracts or obligations, and that no part of such losses and expenses already incurred or hereafter to be incurred do fall on him, the said Edward Stanford, his officers or crew.

This done and protested, in the city of Milwaukee, this fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

In testimony whereof, I, the said notary, have subscribed these presents, and have also caused my seal of office to be hereunto affixed, the day and year last above written.

(Signed) CYRUS CHILD, *Notary Public.*

STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

Edward Stanford, master, W. Abel, 1st mate, Christopher Mason, 2d mate, and James Smith, seaman, of and belonging to the bark called the Newsboy, being severally duly sworn, do severally make oath and say that the foregoing instrument of protest hath been clearly read over to them, these deponents, and that the several matters and things therein contained are

right and true in all respects, as the same are therein particularly alleged, declared, and set forth.

19 (Signed) EDWARD STANFORD, *Master.*
W. ABEL.
CHRISTOPHER MASON.
JAMES SMITH.

Subscribed and sworn to before me this 14th day of November, 1862.
(Signed) CYRUS CHILD, *Notary Public.*

STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

I hereby certify that the above and foregoing is a true copy of the original protest in that case, as appears in the record thereof in my office.

In testimony whereof, I have hereunto affixed my hand seal of office this 20th day of November, 1862.

CYRUS CHILD, *Notary Public.*

District court of the United States in and for the eastern district of Michigan.

DISTRICT OF MICHIGAN, *ss:*

HUGH COYNE
vs.
THE BARQUE NEWSBOY, AND JAMES R. BENTLEY *et al.*, claimants.

Hugh Coyne, of Detroit, being sworn, says that he is libellant in the above-entitled cause; that he verily believes that the testimony of J. T. Halling and Marvin V. Pallister, and John S. Sheffield, at present of Pultneyville, New York, is material and necessary for the said libellant in the trial of said cause; that the said witnesses, each and every one, lives at Pullneyville aforesaid, out of said district, more than one hundred miles from Detroit, where the court at which this deponent expects the said cause will be tried is appointed by law to be held.

And this deponant further says that he is informed and believes the respondents and claimants of the above-named vessel reside at Buffalo,
20 New York, over one hundred miles distant from said Pultneyville, the place where the examination of said witness is expected to be taken; and that he is also informed and believes Mess. Douglas & Andrews, the attorneys of the said respondent, reside at Detroit, over one hundred miles from said Pultneyville, and that the aforesaid respondents and claimants have no attorney or agent within one hundred miles of said Pultneyville, to deponent's information, knowledge, or belief.

H. COYNE.

Sworn and subscribed before me on this 15th day of January, A. D. 1864.
T. SCOTT LEDYARD,
Notary Public and for Wayne Co., N. Y.

District court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY, JAMES R. BENTLEY *et al.*, claiments.

SIR: You are hereby notified that J. T. Halling and others will be examined de bene esse, at the residence of J. T. Halling, in the village of Pultneyville, State of New York, on the 15th day of January, 1864, at 9 o'clock a. m. of said day, as witnesses for the above-named libellant according to the act of Congress in such case made and provided, at which time and place

you are entitled by law to be present and to put interrogatories to the said witnesses.

Dated Detroit, January 11th, 1864.

NEWBERRY & POND,
Attorneys and Proctors for Libellant, Hugh Coyne.

To Mess. DOUGLAS & ANDREWS, *Attorneys for the above-named Respondents.*

21 STATE OF MICHIGAN, *Wayne County, ss:*

John S. Newberry, being by me duly sworn, says that he served the within and above notice on Mr. Andrews, of above firm, by delivering a copy of the same to him personally in Detroit, on the 12th day of January, A. D. 1864, about 3 o'clock p. m. of that day.

JOHN S. NEWBERRY.

UNITED STATES OF AMERICA, *Northern District of New York, ss:*

Be it remembered, that on the fifteenth day of January, in the year one thousand eight hundred and sixty-four, I, T. Scott Ledyard, a notary public, did call and cause to be and personally appear at the residence of J. T. Halling, in the village of Pultnyville, State of New York aforesaid, J. T. Halling, M. V. Pallister, and J. S. Sheffield, to testify and the truth to say on the part and behalf of the libellant in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the eastern district of Michigan, at Detroit, in the State of Michigan, wherein Hugh Coyne was and is libellant and the barque Newsboy is respondent, J. T. Bentley *et al.* claimants; and the said James T. Halling being about the age of twenty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said James T. Halling, and he did thereupon depose, testify, and say as

22 follows, viz:

I reside in Pultneyville, Wayne County, New York; am a sailor; have sailed ten or twelve years; have sailed as master of a vessel the past five years, and for the past three years sailed the sch'r Rival as master; sailed as master the sch'r Rival in the year 1862. On the 12th of November, 1862, I was near Manitowoc, on the west shore Lake Michigan; was in company with different vessels at that time. I cannot name but one vessel, and that was the White Cloud. There were five or six vessels in the immediate vicinity. The White Cloud was right dead ahead of us; we were following in her wake. She was about three miles ahead of us. This was about 7 o'clock p. m. on the 12th day of November, 1862. The White Cloud was the only one to windward of us at that time; from three to four to the leeward of us; three or four astern of us, who passed under our stern and came about and stood on the same tack that we were. Noticed a vessel, about seven or eight o'clock in the evening coming down; saw her bright white light. Between seven and eight o'clock p. m. the wind was southwest, and we were steering south and by east, by the wind, showing a red light, and on the starboard tack. The vessels following us were on the starboard tack close hauled, carrying red lights, the same as we. This was a proper cause and lights to carry under the circumstances. Did not see or hear the collission between the White Cloud and barque Newsboy. Do not know the

23 names of the vessels about me other than the White Cloud. About 8 o'clock p. m. on the 12th day of November, 1862, first saw the white light spoken of, coming down a little on our starboard bow, about one point. I watched the light a spell, and found she worked off a little to the leeward of us; I thought then she was going clear of us. I did not pay much attention to her light for a few minutes, and then I saw it begin to eat to the wind-

ward again. I told one of my men to get a torch-light ready to show them, and we showed it to them. At this time I saw the light which proved to be a barque, and I saw her keep off to leeward again; at this time we were getting pretty close to her, say one quarter of a mile off. Then the barque showed a torch-light; then the vessels that were to the leeward of us showed torch-lights. At the time of the showing of the torch-lights by the other vessels the barque wore ship, hauled up on her starboard tack, and showed a red light, and appeared to head about the same course that we were, and did not see much more of her. A little after eight bells I went below; about 9 o'clock p. m. the mate called me, and said there was a vessel making signals with lights, and blowing a horn; she was just to windward of us he said. The second time he informed me of the fact I ordered the vessel put about and stand into the land to see what was the matter. I stood about and went into the land,
and went about again and came up to the signals on board the
24 schooner White Cloud. The captain hailed me, and said he was leaking
ing badly, and wished me to lay by him all night, which I did, keeping in company with him as far as Milwaukee, which port I went into, and the White Cloud passed by.

JAMES T. HOLLING.

Marvin V. Pollister's testimony.

And the said Marvin V. Pollister, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, the matter in controversy aforesaid, I did carefully examine the said Marvin V. Pollister, and he did thereupon depose, testify, and say as follows, viz:

That I reside in Pultneyville, Wayne County, New York; am a sailor, and have sailed some seven years as ordinary seaman; was on board the schooner Rival on the 12th of November, 1862, and was near Monitowoc, on the west shore of Lake Michigan; was in company with different vessels at the time. I cannot name but one vessel, and that was the White Cloud. There were five or six vessels in the immediate vicinity. The White Cloud was right dead ahead of us; we were following in her wake. She
was about three miles ahead of us. This was about 7 o'clock p m.
25 on the 12th day of November, 1862. The White Cloud was the only
one to windward of us at that time. From three to four to the leeward of us, and three or four astern of us, who passed under our stern and came about and stood on the same tack that we were. Noticed a vessel about seven or eight o'clock in the evening coming down; saw her bright white light. Between seven and eight o'clock p. m. the wind was southwest and we were steering south and by east, by the wind, showing a red light, and on the starboard tack. The vessels following us were on the starboard tack, close hauled, carrying red lights, the same as we. This was a proper course and lights to carry under the circumstances. Did not see nor hear the collision between the White Cloud and the barque Newsboy. Do not know the names of the vessels about me other than the White Cloud. About eight o'clock p. m. on the 12th day of November, 1862, first saw the white light spoken of, coming down a little on our starboard bow, about one point. I watched the light a spell, and found she worked off a little to the leeward of us. I thought then she was going clear of us, and then I saw it begin to eat to windward again. We showed them a torch-light, and at this time I saw the light which proved to be a barque, and I saw her keep off to leeward again. At this time we were getting pretty close to her, say ¼ of a mile off. Then the barque showed a torch-light. Then the vessels to leeward of us showed torch-lights. At the time of showing the torch-lights

by the other vessels the barque wore ship, hauled up on her starboard
26 tack, and showed a red light, and appeared to head about the same course that we were. I went below at eight bells, and saw nothing more of the barque.

MARVIN V. PALLISTER.

John S. Sheffield's testimony.

And the said Jno. S. Sheffield, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Jno. S. Sheffield, and he did thereupon depose, testify, and say as follows, viz:

That I reside in Pultneyville, Wayne Co., New York; am a sailor, and have sailed some five years; was on board the schooner Rival on the 12th day of November, 1862, and was at that time near Manitowoc, on the west shore of Lake Michigan, in company with other vessels; that having listened attentively to the testimony as given by Marvin V. Pallister, and the same being carefully read in my hearing, I believe the same to be true, and do hereby testify to the same.

J. S. SHEFFIELD.

James T. Holling cross-examined by Oscar Folsom.

27 When I first saw the red light it was a little to windward, and about one point; wind southwest. The course we were steering was south, and by east by the wind. I did not notice the White Cloud to change her course. When I saw the bright light it was about one point to windward. Watched her a spell, and it eat off to leeward. We were about ¼ of a mile to leeward when we passed the bright light. When I first saw the bright light cannot say where the White Cloud was. Did not know that the bright light spoken of was the barque Newsboy.

JAS. T. HOLLING.

M. V. Pallister and Jno. S. Sheffield cross-examined.

Did not know that the bright light spoken of was the barque Newsboy.

MARVIN V. PALLISTER.
J. S. SHEFFIELD.

UNITED STATES OF AMERICA, *Northern District of New York:*

I, T. Scott Ledyard, a notary public in and for the county of Wayne, State of New York, under and by virtue of the said several acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses, James T. Holling, Marvin V. Pallister, and John S. Sheffield, all reside at Pultneyville, Wayne Co., New York, and more than 100 miles from the city of Detroit, Michigan, where the trial of said cause is expected to be held.

28 I further certify that a notice, of which a copy is herewith returned, was only served on the attorneys of the respondents, as appears from the certificate and return made thereon.

I further certify that on the 15th day of January, A. D. 1864, I was attended by Oscar Folsom, of Buffalo, New York, in behalf of the Newsboy, and Hugh Coyne in behalf of the White Cloud, and by the witnesses, who were of sound mind and lawful age; and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; and the deposition was by me reduced to writing in pres-

ence of each of said witnesses, and after the same was carefully read the witnesses respectively subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing it up and directing it with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either the parties in deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this fifteenth day of January, in the year one thousand eight hundred and sixty-four.

[SEAL.] T. SCOTT LEDYARD, *Notary Public.*

STATE OF NEW YORK, *Wayne Co., Clerk's Office, ss:*

I, Clark Mason, clerk of the county court in and for the county aforesaid, do hereby certify that T. Scott Ledyard, whose genuine signature 29 appears to the annexed instrument, was at the time of signing the same a notary public in and for the county and State aforesaid, duly elected and sworn; that all his official acts as such are entitled to full faith and credit; and that the aforesaid county court is a court of record.

Given under my hand and seal of office, (the seal of the said court and county,) at Lyons, this sixteenth day of January, 1864.

[SEAL.] PARDIN DURFEE, *Dep. Clerk.*

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, Cook County, City of Chicago, ss:

Be it remembered, that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and sixty four, I, John C. Reiley, notary public, duly appointed under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, and an act entitled "notary public," passed July 29, 1854, did cause personally to appear before 30 me, at the office of Robert Rae, No. 10 Dole's Building, in the city of Chicago, in said northern district of Illinois, Allen Soper, to testify on the part of the libellants in a certain cause depending in the district court of the United States for the eastern district of Michigan, at Detroit, wherein Hugh Coyne is libellant and the barque Newsboy respondent, in admiralty.

Allen Soper, of lawful age, being by me first duly cautioned and sworn, on his oath, deposes and says: My name is Allen Soper; I am about thirty years; I reside in Chicago; I am a master mariner; I was master of the schooner Marion Eagan about the hour of four and one half ($4\frac{1}{2}$) o'clock p. m. of November 12th, 1862, when on the west shore of Lake Michigan, near Kewanee. I had the wind SW. to SW. by W., baffling, my vessel heading to the southward, having tacked ship at $4\frac{1}{2}$ o'clock, as above, when the wind came as above stated and continued until about eight o'clock in the evening, when it commenced hauling to the westward until about 12 o'clock at night of the said day. It came from about west, blowing a good fresh breeze, sufficient to take in light sails; by the wind; weather clear.

A. SOPER.

Subscribed and sworn to before me this 28th day of January, A. D. 1864.

[SEAL.] JOHN C. REILEY, *Notary Public.*

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, Cook County, City of Chicago, ss:

31 I, John C. Reiley, a notary public, duly appointed under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and an act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, and an act entitled notary public, passed July 29, 1854, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of the said deposition named, and that he resides at Chicago, in the State of Illinois, and lives at a greater distance from the place of trial of the said cause than one hundred miles.

I further certify that on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by Robert Rae, esq., proctor for libellants, no one appearing on behalf of respondent, and by said witness, who was of sound mind and lawful age; and the said witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and the deposition was by me reduced to writing in the presence of the said witness, Allen Soper, and from his statements, and after

32 carefully reading the same to the said witness, who subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the same to the clerk of the United States district court for the eastern district of Michigan, and the same with my own hand put into the post office at Chicago, Illinois, and mailed to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and notarial seal this twenty-ninth day of January, in the year of our Lord eighteen hundred and sixty-four, and of our independence the eighty-eighth.

[SEAL.] JOHN C. REILEY, *Notary Public.*

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, Cook County, City of Chicago, ss:

Be it remembered, that on the twenty-first and twenty-second days of January, respectively, in the year of our Lord one thousand eight hundred and sixty-four, I, John C. Reiley, a notary public, for the city of Chicago, in Cook County, Illinois, duly appointed under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act

33 entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, and under and by virtue of an act entitled notary public, passed July 29th, 1854, did cause personally to appear before me, at the office of Robert Rae, esq., No. 10 Dole s Building, in the city of Chicago, in said northern district of Illinois, John W. Reed, Benjamin Eysten, Charles J. McGill, George H. Gibson, and Joseph P. Willis, to testify on the part of the libellants in a certain cause depending in the dis-

trict court of the United States for the eastern district of Michigan, at Detroit, wherein Hugh Coyne is libellant and the barque Newsboy is respondent, in admiralty.

John W. Reed, a witness of lawful age, being by me first duly cautioned and sworn, on his oath, deposes and says: My name is John W. Reed. I reside in Chicago; am a master mariner. I was master of the schooner San Jacinto in the month of November, A. D. 1862. I was in Buffalo, and on board of her on my way up to Chicago. I was on board of her on the 12th of November, 1862, on Lake Michigan. About seven o'clock p. m on that day I was in the vicinity of Twin Rivers. The wind at 7 o'clock p. m. was, I suppose, about SW. southerly; I know it was so from my vessel's heading. I kept no log; I kept no regular journal. I recollect the direction of the wind at that time from the fact that the captain of the injured vessel called on me on my arrival at Chicago, and my attention being thus called
34 to it, and by parties talking it over frequently during the winter, I remember it very well. The breeze had been variable with us that afternoon, and about that time became settled. I did not see the collision between these two vessels, but heard the noise; I had to keep out of the way. About twenty minutes before the collision occurred the damaged vessel, White Cloud, was three quarters of a point on my starboard bow, a mile or thereabouts distant. She was sailing in the same general direction as myself. We had been in company all the afternoon. I could see the light of the barque Newsboy some time before the collision; she was a little ahead bearing in the same direction; she bore about half a point. I had seen the light of the schooner White Cloud a short time previous; I suppose she was by the wind, judging from her light. I was heading at the time south-southeast by the wind. Vessels coming to Chicago at that hour and day would have been sailing by the wind. I could see the vessels when they were together. I could not see what happened before they were together; these vessels were in shore. I was from 5 to 7 miles from shore. I could not tell which vessel was inside. When they came together both lights went out to my sight. I was to the northward of them when the collision occurred. At the exact time of the collision I was busy reefing my fore sail. There were other vessels in the vicinity, and to the windward; there was one three points abaft the beam, sailing by the wind in the same direction. They were to the windward of the White Cloud and close under the land. I could not see how the sails of the White Cloud were trimmed distinctly. The last time I
35 saw them to see how they were trimmed they were close by the wind with the starboard tack aboard. If she had went in stays I should have noticed it right away. If she had went in stays I would have been ahead of her. I am sure of that.

Cross-examination.

I was in company of the White Cloud on Lake Huron, and had been in company with her before the collision, about eight hours. I knew what vessel it was in the daytime. I did not know what vessel collided, though I had been sailing in the same direction all these eight hours before the collision. The White Cloud was sailing in the same direction with me during all this time. I was less than a mile or thereabouts from the White Cloud at the time of the collision. I could hear nothing but a noise of voices about the time of the collision. Could hear nothing distinctly. Could not hear what was said. I could observe no change in the direction of the White Cloud up to the time of the collision. Could not see the vessels distinctly except for the lights. I did not see the light of the light-house at that time. I looked for the Manitowoc light. When I first saw the light

of the Newsboy, the colliding vessel, she was from 5 to 8 miles off. The light bore about ½ point on my weather bow when I first saw it. The light at Manitowoc at that time ought to have bore south-southwest. I was at this time not more than 5 to 12 miles from Twin River Point, and about 18 to 20 miles off Manitowoc. The wind at this time was not more than a point of S. of SW. I was sailing as near the wind as I could go. Accord-
36 ing to my vessel I am sure the wind at this time could not have been between southwest and west. By that I mean which way my vessel was heading. I know that my vessel will run within 6 points of the wind sure, and that is the only way I judge of the direction of the wind. The White Cloud could run as near fully. The San Jacinto could not run so near.

Redirect by Mr. Rae.

I was north of Twin Rivers, northeasterly 12 miles, when the collision occurred. I observed the light of the barque Newsboy about 15 to 20 minutes before the collision occurred, I should judge, can't say exactly; bright light all the time. It was ahead about ½ a point on my starboard bow. The White Cloud was a mile in that vicinity or less from me; her head-light bore about ¾ point on my starboard bow. I should judge the barque was off about 8 miles from me, and about 7 miles from the White Cloud. The light of the barque all this time was nearly ahead of me, and about the same direction as to the White Cloud. I don't mean to say the barque was south-southeast of us; she was south of us. The barque seemed to be in a line south of the White Cloud, and west of her, but how far west I can't say. The light of the barque kept closing up till the moment of the collision as to me. I can't say certainly which light was farthest to the westward when I first saw them, but think the lightof the barque was. Just before the collision the light of the barque was to the westward. The light of the barque was shut out by the schooner. The barque being to the westward her light would have been eclipsed by the hull and sails of the schooner until
37 she opened her stern again.

Recross by Mr. Andrews.

I did not know that it was the barque Newsboy, but I knew it was a barque or brig, as it was square rigged.

J. W. REED.

Subscribed and sworn before me this 21st day of January, A. D. 1864.
[SEAL.] JOHN C. REILEY, *Notary Public.*

Benjamin Eysten, of lawful age, being first duly cautioned and sworn by me, on his oath, deposeth and says: My name is Benjamin Eysten. I reside in Chicago. I am a ship builder. I did repairs on the schooner White Cloud in November, 1862. She was damaged forward of the main rigging on the starboard side. Her deck-pans and decks were carried to one side, so that her deck was out of line about four inches, and injuring the front side of the vessel. The centre buoy was carried over, so much so that the men who held the survey decided she would require a new buoy. The plank and timbers, where something had collided with her, were stove in below the bilge on the starboard side. It took everything from the sail down and below the tare of the bilge. I repaired all these. I was one of the owners of the ship-yard. I did not personally superintend this work. J. M. Benton superintended and gave the direction of the work. He was one of the sur-
veyors. I know all about the correctness of the bills. I know that
38 the charges were made and were paid. I know the repairs were necessary from the collision; I know this by the nature of the repairs.

Mr. Benton is dead. We keep a book of entries in which material and labor is entered at the time it is done.

Hearing of this witness adjourned till to-morrow, at 10 o'clock a. m.

FRIDAY, *January 22nd*, 1864.

Hearing of the testimony of the witness Benj. Eysten resumed at 10 o'clock a. m. Mr. Rae for the libellants.

Witness Benj. Eysten:

I was present at the time the repairs and work on the schooner White Cloud were done.

The witness here opened his book of original entries, and says that the whole amount of material furnished and labor done in making the repairs on the schooner White Cloud is the sum of two thousand eight hundred and sixty-three dollars and sixteen cents, a copy of which account of original entries is hereto attached and marked Exhibit A. There were no other repairs done on this vessel except the repairs caused by the collision. I was there from time to time examining the repairs from time to time as they proceeded.

Cross-examination by Mr. Andrews.

This vessel was repairing at my yard three weeks and four days. I don't know what the age of this vessel was. She did not appear to be an old vessel. The timber we took apart seemed to be very sound, the knees, &c.
We put in a new centre buoy. She had to be repaired according to
39 the report of the surveyors. We went on and made the repairs according to their report, without regard to whether the repairs were necessary or not, without undertaking to decide for myself whether the repairs were necessary or not. We took up a portion of the deck, I think about ⅔ across and on an average of 30 feet in length. I should judge of the above charges about seven hundred dollars were for a new centre buoy. I went and examined the old centre buoy myself.

Redirect, Mr. Rae.

If I had made the repairs on my own responsibility, I should not have made any other or different repairs than those I did make. The prices are the usual market prices for work and material at the time it was rendered and furnished.

Recross, Mr. Andrews.

BEN. EYSTEN.

Sworn and subscribed before me this 22d day of January, A. D. 1864.
[SEAL.] JOHN C. RIELEY, *Notary Public.*

Charles J. McGill, of lawful age, being by me first duly sworn, deposeth and says: My name is Charles J. McGill. I reside in Chicago. I am a vessel agent and ship broker. I have been a vessel agent and ship broker, and have had charge of vessels here for the last ten years, and have had more or less to do with vessels ever since the spring of 1853. In the last
three years I have had under my charge from forty to fifty ves-
40 sels to charter during the running season, of these vessels from this port. I know the schooner White Cloud; she is a standard vessel, and was last year and the year before. She was engaged in the grain trade on the lakes during the season of 1862 and 1863. Her carrying capacity is about 15,000 of wheat, and 16,000 of corn, and her custom-house measurement is 318 tons. Wheat to Buffalo was from 15 to 16 cents freight to Buffalo, from the 14th day of November, 1862, to close of navigation, and

corn one cent less. The average trip from here to Buffalo at that season of the year would be from 10 to 12 days. The expenses of taking in her cargo, taking it to Buffalo, and taking it out, would be five hundred and forty-five dollars, about; I can't say exactly. I base my calculation on which it costs for other vessels of the same size and capacity, making the same trip that fall. Her nett earnings per day on that trip would be one hundred and fifty dollars and 5-12 of a dollar per day for 12 days, amounting to eighteen hundred and five dollars for her nett earnings for 12 days at one hundred and fifty dollars and 5-12 per day. Her gross earnings, calculating fifteen thousand bushels of wheat at 15 cents per bushel, would be twenty-two hundred and fifty dollars. (Testimony of the witness objected to by Mr. Andrews, for the respondent, on the ground that it is not a legal mode of ascertaining the value of the vessel's time.) She would have been worth to charter per day,
41 from the 14th to the 26th November, 1862, one hundred and fifty dollars and 5-12. She would be worth that to the owner on the market, but no charterers would charter her for that, as there would be no margin for profit to sub-charters. It would be worth that to a grain merchant to carry his grain down; and they are the only general class of the community that do charter grain vessels.

(The answer as to what it would be worth to a grain merchant to charter is objected to by respondent's counsel, on the ground that it is not a legal mode of ascertaining the value of the vessel's time.)

Cross-examination by Mr. Andrews, for respondent.

I find her tonnage (the White Cloud) from the marine register's list, and her carrying capacity from my knowledge and seeing her loaded frequently in this port with wheat and corn. I know of vessels being chartered for a trip to Buffalo with grain during the time mentioned here in 1862. I chartered a number myself. I did not charter any vessels during that time referred to for a gross sum, nor do I know of any being chartered for a gross sum in any trade. Grain or lumber vessels in this port are obliged to pay demurrage when delayed beyond a reasonable time in this port. The demurrage of a vessel of this class would be worth one hundred and fifty dollars and 5-12 per day at that time, just what she could earn per day, her nett earnings. I don't recollect of vessels paying any demurrage during that season or at that time; there may have been cases. I have frequently collected demurrage myself, but can't recollect the cases now. I can't name an
42 instance. I can't say that there was any vessel that paid one hundred and fifty dollars, or any other sum for demurrage during that time, or season either. It is a common occurrence here. I can't call to mind that I recollect of any cases where one hundred and fifty dollars had been paid for demurrage. I have heard of a good many instances of vessels collecting demurrage and being paid, but can't say what the highest demurrage was that I have known to be paid. I should say that the average trip of a vessel of her class from Buffalo to Chicago was from 12 to 15 days. I should think it was too late for her to get back, for the reason that the season of navigation closes on the 30th day of November, at noon. Vessels would have to get extra insurance after that. The sailing season is considered as closing at that time. My estimate of what demurrage would be worth is based on my previous statements of what she would carry, the rate of freight, the time occupied in the voyage to Buffalo. The vessel earned her expenses in returning, and during that fall considerably more. Of this class of vessels the voyage down was considered the most profitable. The White Cloud was in ballast when she came up.

Redirect by Mr. Rae, for libellants.

I mean to say that the owner of the White Cloud lost eighteen hundred and five dollars by that trip. (Objected to.) I made my estimate upon what freights were at that time to Buffalo. A vessel of her size or capacity that was ready to leave here on or about the 15th of November could just as well have gone to Cape Vincent, Oswego, or Ogdensburgh, and
43 nearly doubled the amount of freight to Buffalo at a cost of six hundred and forty or fifty dollars more than the trip to Buffalo, allowing six days' more time than to Buffalo, allowing her to go to Ogdensburgh. Her freight as gross earnings to Oswego, would be thirty-three hundred dollars, at a freight of 22 cents to Oswego; and it ranged at 22½ cents to Oswego during that time. I chartered the schooner F. T. Avery, with corn to Ogdensburgh, at 23 cents per bushel of corn, which is equal to 24 cents for wheat, on the 12th day of November; and she made the trip in 20 days, stopping at Buffalo 3 days. There was quite a fleet of vessels left this port at the same time. It was an excellent fall for sailing. (Objected to.) Vessels on the lake are not chartered by the day, except in cases of wrecking, but by the trip, or freight per bushel. I have known a great many vessels chartered for that purpose during the last twenty years, but can't recollect what sum was paid for the use of vessels. According to the above estimate, she would have been worth six hundred and seventy-five dollars more to have gone to Ogdensburgh instead of Buffalo, and she could have gone just as easy there as to have gone to Buffalo.

C. J. McGILL.

Subscribed and sworn before me this 22d day of January, 1864.
[SEAL.] JOHN C. REILEY, *Notary Public.*

44 George H. Gibson, of lawful age, being by me first duly cautioned and sworn, on his oath, deposeth and says: My age is 43 years; reside in Chicago; my business is forwarding and commission and vessel agent, one of the firm of Gibson & Chase, of this city. We have had the charge as agents of about twenty vessels and six propellars during the past six years, each season. I knew the schooner White Cloud in 1862; I know she was a standard vessel; she carries about 15,000 bushels of wheat, as I believe. I don't know this of my actual knowledge. I know what freights for grain vessels from here to Buffalo were from the 14 to the 23 of November, 1862; they were 16 cents for wheat. I know what a vessel of her class and size would be worth per day from the 12th to the 23d or 24th days of November, 1862, it would be worth 150 dollars per day nett; she would be worth a hundred dollars per pay. If I was going to charter her I would not give what she was worth, as I would want to make something out of her.

(Answer was objected by proctor's counsel, as not responsive to the question.)

I cannot say what a shipper of grain would do, for vessels are not chartered in that way. I know of no such vessels being chartered in that way. The usual way of chartering such vessels is so much per bushel.

Cross-examination by Mr. Andrews.

I never knew of a vessel of this size being chartered by the day, except for wrecking purposes. The only instance I know of a vessel being chartered for that purpose was 12 years ago; fifty dollars was paid in
45 that instance; a vessel smaller somewhat, and at a different season of the year. I never knew of a vessel being chartered by the day for lumber. Have known them to be chartered by the trip from here to Buffalo

and other places. I have known of cases last fall of vessels being chartered by the trip from here to Marquette, and there to Cleveland. I know of one case last fall chartered for thirty-three hundred dollars for the trip from Chicago to Marquette, and from there to Cleveland. This trip would take about twenty days. I don't remember the price that was paid for a trip from here to Buffalo. Last year I was offered two thousand dollars to go from here to Oswego, and delivered it.

Redirect.

The White Cloud could have gone just as well to Oswego as to Buffalo, and would have been in as good situation as to have gone to Buffalo, if she had had to remain there all winter.

Recross.

My estimate of the price of one hundred and fifty dollars per day is estimated by the amount she would carry, the time she would occupy in the voyage to Buffalo, and the prices per bushel. In that estimate I don't take into consideration the time consumed in the voyage back from here to Buffalo.

GEO. H. GIBSON.

Subscribed and sworn before me this 22d day of January, A. D. 1864.
[SEAL.] JOHN C. REILEY, *Notary Public.*

46 Joseph P. Wills, of lawful age, being by me first cautioned and sworn, on his oath, deposeth and says: My name is Joseph P. Wills; my age is 36, going 37; I reside in the city of Chicago; I am a sail-maker by profession. I agreed in November, 1862, to do some work on the schooner White Cloud. I made a new fore stay sail; the old one was condemned by the surveyors. It was damaged so much that it was necessary to make a new one. It cost one hundred and thirty dollars.

Cross-examination.

I saw the old sail, what was a part of it. It was considerably torn. Something had evidently gone through it, and split the sail in several directions. The surveyors directed me to make this sail; they were two or three of them. Jordon was one, Doolittle was one. There was an insurance agent there, Capt. B. F. Davidson. The old sail was not worth even ten or twelve dollars. I don't know how the old sail came in this condition. The sail had been worn some, but I can't tell whether it was three or four years old. My judgment as to whether a new sail was necessary, was made by it being ordered by the surveyors. I think a vessel ought to be provided with a sail of this kind once in 3½ to four years.

J. P. WILLS.

Subscribed and sworn to before me this 21st day of January, A. D. 1864.
[SEAL.] JOHN C. REILEY, *Notary Public.*

47 UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, City of Chicago, Cook County, ss:

I, John C. Reiley, a notary public for the city of Chicago, in Cook County, Illinois, duly appointed under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812,

and the act of Congress entitled "An in addition to an act entitled 'An act for the more convenient taking affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, and an act entitled notary publics, passed July 29th, 1854, do hereby certify that the reason for taking the foregoing depositions of the said John A. Reed, Benjamin Eysten, Charles J. McGill, George H. Gibson, and Joseph P. Wills was, and the fact is, that the several witnesses above named were material in the cause in the caption of the said depositions named, and that they severally reside at Chicago, in the State of Illinois, and live at a greater distance from the place of trial of said cause than one hundred miles.

I further certify that on the said twenty-first and twenty-second days of January, in the year of our Lord eighteen hundred and sixty-four,
48 at the time and place mentioned in the caption hereto, I was attended by Robert Rea, esq'r, proctor for the libellants, and George Andrews, esq'r, proctor for respondents, and by the said several witnesses, John W. Reed, Benjamin Eysten, Charles J. McGill, George H. Gibson, and Joseph P. Wills, who were of sound mind and lawful age; and the said witnesses were then and there by me severally first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; and the deposition of each of said witnesses was then and there by me reduced to writing in the presence of the said several witnesses, and from the statements of each of them read then, and after carefully reading the same over to each of said witnesses when concluded, who severally then and there subscribed the same in my presence, the oath being administered to each of said witnesses by me. I have retained the deposition of each of said witnesses, taken and subscribed and sworn to as aforesaid, in my possession, for the purpose of mailing the same to the clerk of the district court of the United States for the eastern district of Michigan, the same with my own hand put in the post office at Chicago, and mailed to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

49 In testimony whereof, I have hereunto set my hand and notarial seal this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year, at Chicago, in said Cook County.

[SEAL.] JOHN C. REILEY,
Notary Public for the City of Chicago, Cook County, Illinois.

Commissioner's fees: Taking deposition 5 witnesses, certificate, seal, &c., &c., $15 00.

CHICAGO, *Nov'b'r*, 22, 1862.

Sch'r White Cloud—

To 6, Reardon; 6, Snow	$30 00
3½, Lafabe; 4, Crouse	18 75
3¾, Conrad; 4, Hughan	19 37
1¾, Willard; 4½, Walker	15 00
6, Edmunds; 5½, Gumer	28 75
5½, Baxter; 5¾, Walthen	28 12
5½, Squires; 5½, O'Brian	27 50
4¾, Benson; 5½, Colton	25 62
4½, Casey; 5, Simpson	23 75

To 5, Sormson; 5, Hebber		$25 00
5, Lysten; 5, Bellean		25 00
1, Gaslin; 5, Mathews		15 00
5, Gorman; 4½, Coffee		23 75
1, Patricks; 4, McCarthy		12 50
4½, Lawlen; 4, Howard		21 25
4¾, Burny; 4¾, O'Doane		23 75
50 5, Murphy; 5, Burke		25 00
¾, Anderson; ¾, Simpson		3 75
4, Wallen; 3, Soper		17 50
2, Newland; 2, Grady		10 00
2¼, Powers; 2, McMohon		10 62
2, Hanlan; 1¾, Campbell		9 37
1, Broil; 1, Dayin		5 00
5, Jamison		12 50
5,548 feet oak; 568 lbs. iron		200 43
129 feet spike; 32 lbs. washers		16 72
66 pounds oakum		7 92
Dockage, 317 tons		63 40
		745 32

CHICAGO, *November 29th*, 1862.

Sch'r White Cloud, Dr.

To 5, Reardon; 5, Newland	$25 00
5, Broil; 3, Campbell	20 00
5, Dayne; 5, Hanlon	25 00
5, Grady; 4½, Gaslin	23 75
5, Powers; 5, McMohon	25 00
5, Squires; 4, Billian	22 50
5, O'Doane; 3¼, Conrad	20 62
3¼, Benson; 5, Hughan	20 62
5, Simpson; 4, Samson	22 50
3¼, Casey; 2¾, Walker	15 00
5, Berry; 5, Calton	25 00
5, Edmunds; 4, Coffee	22 50
4, Lyston; 5, Murphy	22 50
5, Webber; 5, Soper	25 00
5, Lawen; 5, Walther	25 00
5, Mathews; 5, Howard	25 00
5, McCarthy; 5, Snow	25 00
5, Burke; 5, Wallin	25 00
5, O'Brian; 3¼, Willard	20 62
5, Gorman; 2, Derushia	17 50
3¼, Lafabe; 1¼, Boxler	11 25
1¼, Lyman; 1, Oberton	5 62
15 feet pine; 829 lbs. spike	66 77
515 lbs. iron; 2,597 feet oak	138 81
84 lbs. knaws; 72 washers	29 20
8 bales oakum	48 00
1 barrel pitch	22 00
	774 76

51 Sch'r White Cloud, Dr. CHICAGO, *December* 6, 1862.

To 6, Reardon; 6, Newland	$30 00
6, Hanlon; 6, Grady	30 00
6, Powers; 6, McMohon	30 00
6, Webben; 6, Soper	30 00
5, Dayne, 4, Gaslin	22 50
6, Derushia; 5, Bevil	30 00
5½, Casey; 6, O'Doane	28 75
6, Snow; 6, Edmunds	30 00
6, Benson; 6, Berry	30 00
6, Hughan; ¼, McCarthy	15 62
¼, Mathews; ¼, Howard	1 25
¼, Simpson; 1, Willard	3 12
6, Lyston; 6, Lawler	30 00
6, Walther; 6, Gorman	30 00
6, Burke; 4, Wallin	25 00
6, O'Brian; 6, Sormson	30 00
6, Murphy; 6, Bellain	30 00
6, Catlan; 6, Coffee	30 00
6, Conrad; 6, Squires	30 00
6, Walker; 6, Coleman	30 00
1,931 lbs. iron; 92 lbs. spike	123 22
56 lbs. washers; 2,302 feet oak	80 26
300 deck plugs	90
18 bales oakum; 1½ barrels pitch	81 00
13 nails; 297 feet pine	9 69
2 kegs w. lead; 3½ gal's oil	11 13
13 days' extra dockage	195 00
	1,017 44

52 Sch'r White Cloud— CHICAGO, *Dec'b'r* 11, 1862.

To 3, Reardon; 4, Newland	$17 50
4, Hanlon; 3, Grady	17 50
3, Powers; 4, McMahon	17 50
4, Webber; 4, Soper	20 00
4, Derushia; 4, Bevil	20 00
4, Casey; 20 Darniel	15 00
1, Snow; ½, Edmunds	3 75
1, Benson; 1, Berry	5 00
1½, Hughan; 1½, Lyston	7 50
1½, Lawer; 2, Walthens	8 75
3, Burke; 1, O'Brien	10 00
3, Sormson; 3, Murphy	15 00
4, Benson; 3, Colton	17 50
2, Coffee; 1½, Conrad	8 75
3, Sullivan; 1¾, Henson	11 87
1¼, J. Powers; 2, Shaffer	8 12
1¼, Oberton: 2, Crouse	8 12
1½ barrels pitch; ½ keg lead	34 25
60 feet strips; 500 feet pine	16 20
1 shingles; 8 lbs. nails	1 23
6 day services	60
	264 14

Brought forward		$246 14
To 4 day painting, 16s	$8 00	
3 kegs lead	5 00	
4 gal's oil, $1 75	7 00	
1 pound lampblack	50	
		20 50
		284 64
10 days' caulking	25 00	
1 bale oakum	6 00	
		31 00
		315 64

53 CHICAGO, *Dec'b'r* 9, 1862.

Sch'r White Cloud, Cr.

By cash $500 00

CHICAGO, *Dec'b'r* 11, 1862.

Sch'r White Cloud, Cr.

By check of Atwater	$1, 014 32
cash of Capt. Coyne	1, 100 00
dis't on bill	97 50
	2, 211 82

CHICAGO, *Dec'b'r*, (daybook 13; ledger 11,) 1862.

Sch'r White Cloud, Cr.

By Capt. Coyne, dept	151 34
	2, 863 16

Balance—	Dr.	Cr.
Nov. 22d	$745 32	
Nov. 11th	774 76	
Dec. 6th	1, 017 44	
Dec. 11th	315 64	
Dec. 9th		$500 00
Dec. 11th		2, 211 82
Dec. 11th–13th		151 34
By errors debit, 1 cent	2, 853 16	2, 863 16

For items see face of accompanying daybooks.

54 *Testimony for libellant, February 9th*, 1864.

HUGH COYNE
vs.
THE BARQUE NEWSBOY.

BENTLEY *et al.*
vs.
THE SCHOONER WHITE CLOUD.

The ownership and enrolment and license of the vessels is admitted as alleged in libels and answers.

Captain George Elsey, sworn:

I am 38 years old; have sailed 17 years—9 years as master, 11 or 12 as an officer—on the lakes, on sailing vessels, principally from Chicago to Buffalo. In 1862 sailed the White Cloud—317 tons, 15,000 bushels of corn. On the 12th November, 1862, at 6 in the evening, we were on Lake Michigan, a little below Twin River Point. The equipments of our vessel was in good order. The crew numbered 9 all told—3 officers, 5 before the mast, and the cook. That is a full crew for our vessel. We carry two compasses on our vessel, 1 in a binnacle for the man at the wheel and one forward of the cabin in an old binnacle on the main deck. It was the mate's watch; he is a good man; his watch commenced at 6 o'clock. From 6 until the
55 collision I was on deck all the time except when I was eating my supper, perhaps 15 minutes. I came on deck last about 20 minutes before the collision; the mate was then walking on deck on the starboard side, forward of the main rigging; Henry Wright was at the wheel; John Garvey was on lookout for one. I forgot the name of the other man; there were 2 on lookout. I have not seen him since; he said he was going to New York to go to sea. I think his name was Roberts. We were carrying a red light; it was hung in an iron frame right over the stem or top of the jibboom. It was a good lantern—a large square lamp.

(No point made on either side as to the goodness or position of the light on either vessel. This not to be taken as an admission on part of the Newsboy that its color was the right color.)

When I came on deck the wind was about southwest by west, a little baffling, a point to westward sometimes. Our vessel was heading, by the compass forward of the cabin, south ½ east. We were on the starboard tack; the sheets were hauled close aft by the wind; we had been on that tack about 3 hours or 3½, I think. It was a cloudy night, pretty dark—a good night for seeing a light; could see the land; no fog or haze on the water. I think we were going between 6 and 7 miles an hour. There was a nice good breeze; were carring all sail. We were in ballast and draw-
56 ing 5 feet ½ water; about 7 or 8 feet side out of water without the bulwarks; 10 or 11 feet of side out of water and more on the windward side. There were five other vessels in our company, I think. There was one ahead on the port bow; I think that was the Mary Ann Egan. The next one was on our port quarter, and was called the Whaling; she was perhaps 1½ points abaft the beam, and perhaps 2 miles off. There was 2 right astern of us; one was the Blue Bell; I forget the name of the other; I should think one mile or 1½ miles astern; one was a little closer than the other. The next one was the Rival, on our starboard quarter, about ½ mile off, perhaps a little nearer; can't tell exactly; she might have 2 or 2½ points on the starboard quarter. Some of these vessels had been in our company 2 days, some not so long, the last since 3 o'clock. They were all steering about the same course we were, by the wind. They were all carrying red lights that I could see; could not see the light of one farthest ahead. I saw the light which afterward proved to be the Newsboy when I came on deck, about 20 minutes before the collision; it was 1½ points or 2 points on our starboard bow. I saw it first, and told the mate about it. I could not tell how far off; it might have been 5 or 6 miles. At the time I made the light I went to the compass; we were heading south ½ east; the wind
57 was about southwest by west; it might have been a little to the westward; it baffled a little. We were not far off from land. As the vessels approached each other the approaching light seemed to open out a little on the starboard bow until it bore, I should think, 3 points off; the light then disappeared for a very short time; it then showed up right away; then after I saw the light I saw a torchlight right off on the same vessel. I could see

the sails, some of the rigging, and some of the hull by that light. That showed her to be heading pretty near for us; she seemed to be swinging to starboard, her bow to the right. I was from the binnacle to the weather rail back and forth forward of the cabin; there was nothing to obstruct my view. She was very close, probably her length or twice that; I could not tell exactly. Up to that time no alteration had been made in our course that I could see *up to that time.* I then ordered the man at the wheel to put it hard a starboard. If we had kept our course, there would have been a collision. I jumped to the timber heads and let go the main sheets on the run. The effect of these two movements was to help the vessel to swing off to port; she might have went off one point 1½ or 2 points, I can't tell; may be more. I ordered the helm hard a starboard, and ease off the main sheet to ease off the blow and make it glancing. The vessel struck us on the starbaod side a little forward of the beam. The Newsboy's fore-and-
58 aft sails at the time she hit us hard jibbed and were on the port side. From the time I gave the order hard a starboard until the collision it was less than ½ a minute, I am sure, a good deal. When I let go the main sheet the Newsboy was one half her length off, I should think. The collision broke our rail and stancheons and bulwarks, from the fore nearly to the main rigging, covering board or plank shire; shoved the whole deck frame over to port and center-board box over to port; it cut her outside plank down 11 or 12 streaks below the water line as far as the bilge; it broke the clamps and ceiling down to the bilge and bilge kelson. That was the principal part of the damage. The capstan was broke and fore stay sail split up pretty bad; some of the deck plank were broke and all shoved out of line 3 or 4 inches; it started the buts of deck the whole length of the vessel; the rigging was not carried away. The Newsboy, I should judge, was going 8 or 9 miles an hour. She is considerably larger than us. I think she was grain-loaded. After the collision, as soon as we got to rights, I think we headed about south by east. I saw the compass, and that is about the course she made on that tack after collision. The wind was about southwest or a little westward. We stood to 10 o'clock on that course I think. We signalled the schooner Rival after the collision. We were leaking consi-
derable, and I wanted to keep her along with us. After the col-
59 lision I took the hatches off and went down in the hold and tried the pumps. We proceeded to Chicago and got there at 7 in the morning of the 14th. We repaired at Banta's dock; we were there about from 24 to 27 days, it might have been a little longer. I was there over a month. Freights at that time were 23 cents for wheat to Ogdensburg. We carry from 14,000 to 14,600 bushels. Freights to Buffalo were 18 cents for wheat. It takes to make a trip to Ogdensburg from 10 to 14 days, and to Buffalo and back to Chicago from 18 to 20 days. Other vessels made this round trip to Buffalo and back to Chicago, that I know of. After our vessels were repaired I laid her up at Chicago. Nothing else was repaired at Chicago, at Banta's dock, except the damages caused by the collision.

Cross-ex.

My mate's name is James McAerly. He had been with me from the time I fitted out. He is here. Wheelsman was Henry Wright. He went on watch with the mate. I cannot say whether he was at the wheel all the time or not. Some of the mate's watch got supper after 6 o'clock. I think Henry Wright did also; one of the lookout. Wright is here. I think Garry was at the wheel while Wright was at supper. It would be one of the men at the wheel that was on the lookout. I should think Wright and
60 one of the lookout-men would be at supper then. Garry is here. We got supper, and it was all over more than ½ an hour before the col-

lision. The mate was on deck while I was at supper. I could not say which left the supper-table first, Wright or I. Wright was on deck ½ an hour before the collision. I first went on the starboard side of the vessel to the weather rail after coming on deck. I then went and talked to the mate. He was walking the deck on the starboard side of the vessel. I just spoke to mate. I then went down in the cabin, and think I lit my pipe. I went down to supper, and also to light my pipe. When I came on deck, just after supper, I found the mate, the lookout, and man at the wheel; also the 2d mate; his name is Peter Cading; he is here, I think. I think Garry was then on the lookout. I am not sure whether Roberts or Wright was at the wheel. When I went below the second time I was there perhaps a minute or two; then I came on deck, and looked first to see how the vessel was heading. I looked at the compass both this time and, I think, also the first time. I am not positive whether I looked at the compass the first time or not. I am positive I looked at it after lighting my pipe. After looking at compass I stepped to windward, and saw a light ahead our starboard bow. Wright was then at the wheel. The mate was walking the deck amidships. 2 men were on the lookout; they were Garry and Roberts. The light had not been reported to me when I first saw it; was Manitowac light when I first
61 saw it. I cannot tell how far we were to the north of the Manitowac. It is from 7 to 10 miles from Manitowac to Twin Rivers. We were from shore square off into the lake between 2 and 3 miles; perhaps a little more. I asked the mate if he saw the light. He said he had not seen it. I said that must be Manitowac light. He said he thought it was. I went off forward of the cabin, to the binnacle, to see how the vessel was heading, and saw she was heading south ½ east. I then stepped up to windward and look at the light again. I think I asked the man at the wheel if she headed south ½ east all the time. He told me she fell off about ¼ point sometimes. I told him to keep her up by the wind south ½ east if he could. Said nothing to him about its being Manitowac light. When the mate and I were talking we were 50 or 60 feet off from man at the wheel, perhaps. I don't remember of any other talk with the man at the wheel. I then went to the weather rail. The light then bore south by west or south by west ½ west, about 1 point, 1½ point, or 2 points off starboard bow. I believe I then went to the binnacle, forward of the cabin, to see if the vessel was on her course. I went then pretty often; stood there most of the time. When I stood by the weather rail the 2d time and saw the light it was from 10 to 15 minutes before the collision. After looking at the binnacle I told the mate it was a vessel's light on our weather bow; vessel bound down. Un-
62 til I had told the mate it was a vessel's light I had given no other order or direction to the man at the wheel than I have mentioned. When I told the mate it was a vessel's light it then bore ½ point more on the starboard bow. Before then I had not opened it any—not much—not enough to amount to anything. Up to the time I told the mate it was a vessel's light I thought it was the Manitowac light. I was not positive whether it was vessel's light or Manitowac light. When I told mate it was a vessel's light it was from 10 to 15 minutes before collision; told him to keep a good lookout. I was standing part of the time near the binnacle and sometimes near the weather rail. After telling the mate I went back to the binnacle. I then looked around, looked at this light, and looked at the binnacle. The vessel was then getting pretty close to us. That light then bore from 2 to 3 points on our starboard bow, about 2 lengths or more off, getting pretty close. It seemed to open out more as it got closer. Saw the torch-light right away after that. When I said 2 lengths or more off I meant 2 to 3 lengths; that is as near as I could get at it. It is difficult to judge of the distance.

Up to this time the white light was out of sight a very short time just before the torch-light showed; might have been out of sight while I could count 10, a little over or a little less. That was the first I saw of the Newsboy's sails, when she showed the torch-light. She appeared to be heading
63 at an angle of about 45° She seemed to be swinging to starboard fast. When I saw that I told the man at the wheel to put her helm hard a starboard. I was standing about 9 or 10 feet from where the main sheet was belayed, right by the binnacle. I jumped to the main sheet and let it go. I did not take long to let the rope go; a short time; could not count 10, I think. At the moment of collision I cannot tell exactly how we were heading. When I left the binnacle the vessel was on her course. She may have swung off 1 point or 1½ or 2 points; can't tell exactly. She struck us a little aft of the foremast, nearly ½ way between fore and main mast. I think her bowsprit hit us just abaft the fore rigging. I could not see the mark where the bobstay cut the sail. I judge the flying jibboom went in forward of the foremast from the hole in stay sail; but I can't tell. I could see the land about 3 or 4 miles, and could see the loom of the land at point of collision. There was no white rocks or shore that I know of. I think the Newsboy had all sail on. You can see the loom of the land a great deal farther than you can see a vessel's sails. Our vessel will sail within 5½ points of the wind. I call her close-hauled, with a good full on at 6 points. We were sailing her that night as close to the wind as we could, and do
any good; our object was to hold on to the land, and we had to make
64 streaches to do it. The general run of the land there is about north and south. We could tell by the depths of water the run of land, but it was not necessary to take soundings, as we could see the loom of the land. Our course before it was changed was south ½ east. We had been on that course from 3 to 4 hours. The collision was about 7 o'clock. It was after 3 o'clock when we took that course. We were off Keniwac then, and off from land about 3 or 4 miles; I can't tell exactly. We had a small table light in the cabin; the cabin had no side windows; the windows were in the forward side of the cabin. There were windows in the cabin, right out of the stern of the vessel. We were carrying all sail; 4 jibs. I think there was no light in the galley, but think there was one in the pantry, back of the galley. There were no windows in that room. It was only lighted by the doors into the cabin. There were no side lights in the pantry. The lookouts were stationed that night forward of the windlass. I do not know whether they were at their post all the time. The schooner Grey Eagle was not in our company that night that I know of. She might have been. There was one I did not know the name of. If I had put my helm down there would have been a collision any way; we were too close to avoid. My vessel will not come up in the wind quicker than she will keep away when she is light.

65 *Redirect.*

I did not see the lookouts away from that place only when they went to supper. I cannot swear positively either way whether Mr. Wright was or was not at supper after 6 o'clock. Our vessel carries a centre-board; it was down that night; a vessel close hauled on the wind makes lee way. Our vessel that night probably made a point to lee way, being light; all vessels make more or less.

To the judge: After I saw the light I did not change our course until we were a length and a ½ from the vessel, and then because I saw a collision must take place. I then changed her course to port. I put the helm hard astarboard and the vessel payed off to eastward. From my experience that was the only course left me in the emergency. After the collision we made

Manitowac light, probably about ½ hour after the collision; we made it broad on our starboard bow about 4 or 5 points. After the collision we run between 5 and 6 miles an hour; stood south by east till 10 o'clock; made Manitowac light while in that course. I have been in the habit of navigating that lake for the last 12 or 13 seasons in the same trade as I was this trip.

James McAuley sworn:

66 I am 40 years old; commenced in 1840 sailing and sailed every season but 5 or 6 since. Have been a mate 4 or 5 seasons. I have been a master 7 or 8 years. Have sailed only on inland waters. In 1862 I was on the White Cloud as mate as long as she run. My watch commenced that night at 6 o'clock. Henry Wright, John Garry, and one other were in my watch. Henry Wright had the wheel. At 6 o'clock our vessel was heading south ½ east, close by the wind, on the starboad tack; the wind was about southwest by west, or it may not have been better than southwest ½ west. We were going along from 6 to 8 knots per hour; there were 2 forward and myself on lookout; our vessel had a full crew. We carry two compasses, 1 aft by the wheel and 1 forward of the cabin, both in binnacles. We had a patent wheel. We made the light which afterwards proved to be the Newsboy from 1 to 1½ point to windward. The light was reported by the lookout. I thought it was Manitowac light This light was made about 15 minutes before collision, may be 20, perhaps not over 10; can't say positively. I was standing by the main rigging on the starboard side. I think the capt'n called my attention to it first. As the light approached nearer I cannot tell how it bore, as I walked to leeward to look for other lights. I think we appeared to open the light more as we approached it till it bore probably ½ point more than when we first made it. After the light was made I don't recollect that I saw our compass myself. I was more particular to keep her by the wind. She was

67 kept by the wind. I did not notice any change in the course of the Newsboy until we saw her torch-light; she was then bearing towards us, off the starboard bow about 3 points or perhaps more. When she showed her torch-light we could see the loom of her sails and her position. She appeared to be heading right for us. I think she was swinging astarboard with her wheel aport. Up to that time there was no change in the course of our vessel that I am aware of. I don't know of any. When I saw the torch-light she might have been 200 feet, though she looked right on top of us. She might have been more. If we had kept our course a collision would have resulted, I think. I did not hear our capt'n give any orders. When we saw the torch-light I went forward to get a better view of it. I went forward of the fore rigging. I think I sung out "She is coming right into us." I then started aft to let go of the main sheet. When I got by the mainmast I saw the capt'n had let it go. I then went to leeward and let go the main gaff top sail sheet. When the collision occurred I was coming up to windward from letting go the main gaff top stay sail sheet. She struck us between our main and fore rigging on the starboard side. When the capt'n called my attention to the light it was 10 or 20 minutes before the collision; it may have been more; the capt'n stood by the after timber-head. I was walking the deck and looking out for

68 lights to leeward. Captain stood on deck. There were 5 or 6 other vessels in our company to leeward and windward, and 1 ahead off in the lake; could not see her after dark, I think; all carried red lights; we did too. When I took the watch at 6 o'clock we were down below Twin River and off land from 3 to 6 miles probably. At the time this vessel showed her torch-light if we had put our helm hard aport and luffed we should have hit her any way; there was no way to avoid it.

Cross-ex.

Had been with Capt'n Elsey all the season. I was not well acquainted with Lake Michigan. I don't recollect that after making the light that I looked at the compass particularly. I made it a point to look at it because we wanted to keep the land close aboard. Capt'n Elsey was watching the compass and also the light; I left it to him. I don't recollect that we could see the land. At the time of the collision we were probably 3 to 6 miles off land. I cannot tell exactly; we pay attention to the compass to keep off the land, but if we see the land ahead or on the bow, we shape our course ac cordingly. Our compasses agreed as near as compasses generally do; they did not vary over ¼ point. I think Capt'n Elsey saw the light first; the men lookout forward reported the light to me when they saw it. Capt'n Elsey called my attention to the light first, before I saw it. We then
69 thought it was Manitowac light, he remarked he thought it was. I first thought it was not Manitowac light when I saw the torch-light. I did not notice the light much, it was so far to windward. Capt'n and I were at supper together, I think. I have forgotten whether we were at supper together, but think likely we were. The 2d mate was in charge of the deck when we were below. I can't say who gave the 2d mate the charge of the deck. I recollect the 2d mate was on deck before we went below. I remember he came up and took charge of the deck when I went below. I recollect he came on deck before I went below. Can't say whether capt'n or I went on deck first; think it was the capt'n. Didn't see the light when I first came on deck. Can't say how long we came on deck before the collision happened or long it was before we saw the light. I think the capt'n staid on deck after supper until the collision; that is my impression. I don't think the capt'n smoked at that time. Don't know whether capt'n went below to light his pipe or not. I don't think he smoked. I first noticed that we opened our light on the starboard bow from 3 to 5 minutes before the torch-light was showed; we appeared to be nearing each other, but opening the light; that would be the natural appearance of the Manitowac light. When I saw the torch-light I was standing or walking by the main rigging; could see the shape of her sails clearly then; she
70 appeared 3 or 4 points off our bow then—[counsel here say this was the angle at which he placed it]—and at an angle of 45° to our course. She was swinging to starboard. I went forwarded, trotted along about 80 feet forward of the forerigging, it would probably take 10 seconds. I then looked off at the torch-lights. I think there were two, one forward and one aft. I stood there not to exceed 2 or 3 seconds. I then ran aft nearly to the main rigging, it took less than ten seconds. I came aft and let go of the main gaff top sail sheet near the foot of mainmast. I let go the line before the collision happened; it took 2 or 3 seconds to do that. I started to go to windward when we collided. I don't know that I saw the torch-lights themselves, but the illumination on the sails. I think they were on the port side of the Newsboy. I think they were held up. Besides the signal light on our vessel there was one aft the binnacle; no side windows to cabin, no skylight to it, no side windows in the galley or skylights. There was no change in our course from the time we made the light until we saw the torch-light. If the wind had changed, her course might have been changed for a short time, and I not know it for a short time. Did not hear any order given to the men at the wheel. The White Cloud was a little off the wind when the collision occurred, perhaps 1½ point when collision occurred. She may have been off 2 points, but don't think she was, as
71 the time was very short. It would not take long to swing 2 points; it might do it in 30 seconds if the wheel was promptly put hard

astarboard and the main sheet let go. I did not see the jibboom come over our deck; it must have come over, I think, between the fore rigging and foremast, because the fore-staysail was split. The collision knocked me off my feet. After I got up and saw how the vessels lay, they were at an angle of about 45° between the sterns.—[Counsel agree that the position at which he placed them was this angle.] I think the jibboom was forward of the foremast. We had been S. ½ E. probably one or two hours, may be 3; I don't recollect. At 4 o'clock I think we were by the wind. We kept the land aboard by making streaches. I was not on watch before 6. Capt'n and 2d mate were on watch before 6. The collision was about 7, or between 6 and 8 o'clock. I think the Newsboy was swinging to starboard when I saw the torch-light. I don't think we could have cleared her by luffing. Our vessel will keep away quicker than she will luff. There was more chance of avoiding a collision by keeping away than by luffing. A vessel ordinarily with sails trimmed by the wind will luff quickest. You can let go the main sheet quicker than you can light up the jib sheets.

72 *Redirect.*

I do not remember whether I went to supper that night before or after the watch changed. There was nothing to call my attention to it particularly. My impression is we went to supper before the watch was changed, but won't be certain. It was our usual custom to do so. Don't remember seeing Manitowac light after the collision.

Recross.

Change the watch at 6 o'clock, when outside ordinarily. We usually get supper about ½ past 5, between 5 and 6. A portion of both watches get supper together. The watch going on at 6 usually get supper before that when it is ready. Don't remember seeing Manitowac light after the collision. May have seen it, don't recollect it. When I first saw it was a vessel coming, it would have taken 2 or 3 minutes to have luffed and got her head into the wind. We would have had to light up the jib-sheets; that is the usual custom when there is no haste. We could have luffed without lighting up the jib-sheets. When I said it would take 2 or 3 minutes to luff I meant if we cast off the jib-sheets; there are 3 jib-sheets to cast off; they are belayed forward of the forerigging; had 2 men forward. I was by the main rigging when the light was made. No more difficulty letting go the jib-sheets than the one I let go, except there was one more of them.

73 If no sheets were let go fore or aft, only the helm changed, she would have kept away quicker for a point or two than luffed. I should think that is so as a general thing with vessels under such circumstances for a point, or 2 or 3. A vessel with all sails set will keep away quicker than she wll come into the wind. I did not hear the capt'n give orders to the man at the wheel. Knew it was put up, because the main sheet was let go. Capt'n was letting go main sheet when I went aft to let go the main gaff top sail sheet. Did not see then that the other vessel was crossing our bows; thought she was coming into us head on. I did not hear anybody speak on board of her. Could have heard if they had hollowed loud, I think. Heard no one sing out luff. When both vessels have a free wind, it is usual for both to put helm aport and pass on the larboard side. When the vessel is on the starboard tack, she keeps her course. Vessels by the wind meeting a vessel coming with a white light keep their course. There was a light in each binnacle.

Henry Wright sworn:

I am 33 years old; I live in White Water, Wis., 50 miles from Milwaukee. Have sailed since I was 15 years old, and have followed

the sea ever since, except last year. I have sailed on salt water as 2d mate about 2 years. Have been in U. S. service, joined it in 1854.
74 Was 3 years and some months. I was able seaman in the San Jacinto, then in the Potomac and then in Wabash, as capt'n of the main top. She is a 60 gun frigate. I was on her 18 months. Shipped on White Cloud in the spring, and was on her all the season. I remember the collision between her and the Newsboy in Nov'r. I was in mate's watch. My watch commenced at 6 o'clock. I had supper before my watch commenced. When I went to the wheel I don't know the man's name I relieved. I stayed at the wheel 2 hours and over; can't tell how much over. When I went to wheel the vessel was heading S. ¼ E. or S. ¼ E. Her sails were trimmed by the wind on the starboard tack, carrying a red light. The wind was about SW. by W.; a pretty good breeze. While on my watch and before the collision, I made a light a point or 1½ right over the cat-head on starboard bow. I heard the capt'n and mate talking about the light some time afterwards. Don't know what they said. As the vessels approached I brought the light to bear between the fore and main rigging. I got off our starboard bow about 4 or 5 points. Can't tell exactly. It was a bright light. Before the collision the vessel showed a torch, and about the same time the capt'n ordered me to put the helm up. From the time I took the wheel until that order was given our vessel had been heading S. ¼ E. That was as close to the wind as she would lie. I had received no other
75 order from capt'n, mate, or any one with regard to changing the course before that. It was my duty to look after my vessel, and that is the way I know she had been on her course. I took pains to keep her so. The compass was in the binnacle 18 inches or 2 feet from me, where I could see it all the time. When I got the order hard astarboard I put the helm right up. When I put the helm hard astarboard the ship was right on to us. What I will say is that as soon as I put the wheel up a collision occurred. She struck us just before the main rigging. The capt'n was standing on the quarter-deck; don't know where the mate was. Had seen the capt'n on deck probably 10 or 15 minutes before the collision. I can't say exactly. The capt'n told me to put the helm up, and he came aft and slacked up the main sheet. He was there before, but how long before I don't remember. He told me to keep a clear full on; that is so all the sails will draw full and by. At the time the Newsboy struck, her sails were jibbed over. They were in a very disorderly state. There were 5 or 6 other vessels in our company. They had been in our company. Some had streached across the lake with us. 1 or 2 on the weather quarter, 1 astern. I did not notice their location particularly, because I was at the wheel and had to look out for my own vessel. 1 was way on the lee bow, but I can't tell where. Those astern had red lights, and those on the quarter
76 also.

Cross-ex.

Never sailed on the lakes before that season; don't know a great deal of the coast along there; had been 1 or 2 times to Green Bay. I don't know Manitowac light; no use saying anything; I don't know; don't remember of having heard of Manitowac light; have since heard the capt'n say that the light he saw that night he first took to be Manitowac light; heard him say that since I have been in Detroit; he spoke about it the night of the collision; that was after the collision; did not hear him speak of it before the collision.

Question. Was it after the collision that the capt'n said he made the mistake?

Answer. I never heard the capt'n say that he ever made any mistake; he

did say he took the bright light for the Manitowac light. I was not at the wheel when he said that; never heard anything of it while I was standing at the wheel; can't say how long I was at the wheel after the collision; stood some time; had no time-piece there; stood there at the wheel ½ hour, more or less. When the capt'n said he thought the bright light was Manitowac light I was forward clearing away the fore stay sail. I had my supper
77 before going to the wheel; don't know the man's name I relieved. I think capt'n took supper when I did, but can't say positively. Capt'n came on deck before me, I think. I don't know as the capt'n went below to light his pipe; did not see him do it; he seldom smokes, though I have seen him do so; don't remember whether he did so on ship; don't know that he had a pipe that night; can't say whether the capt'n was on deck when I took the wheel. I saw the capt'n 10 or 15 minutes after I took the wheel; can't tell exactly how long. After that I can't tell how many times he went into the cabin; I did not watch him. The White Cloud is sharp forward; minds her helm well. The cathead was 6, 8, or 10 feet from stern; can't tell exactly. The helm is clear aft. Capt'n told me to keep a clear full on about 10 or 15 minutes after I relieved the man at the wheel. I kept her just full and by as near to the wind as she could lie without shaking. When capt'n told me to put helm up he stood on the quarter deck by the main sheet, slacking it away. He said put the helm hard astarboard. From where the helm was to put it hard astarboard it took 10 or 15 seconds, I think; in such times the time seems longer than it really is; I can't tell exactly. I kept the compass in sight all the time. I can't tell how she headed when she struck. The helm was put hard up, and I don't know how much she fell off; I think she
78 might have fallen off about SE.; probably not that much; say SE. as near as I can fix it in my judgment. I saw the jibboom of Newsboy come over; it came over the gangway just before the main rigging; 2 or 3 feet forward of the main rigging; perhaps a little more; can't tell exactly—[he locates them]—a little more than 45°; between the sterns about 60°. 10 or 15 minutes before the collision, when I saw the capt'n, he was on the quarter deck. Capt'n was standing by the timber heads, where the main sheet is belayed, when he told me to put the helm hard astarboard.

Question. What did you mean when you testified on your direct examination that "the captain told me to put the helm up, and he came aft and slacked the main sheet?"

Answer. I mean to say that the capt'n gave me that order for me to keep the ship away until further orders; he told me to put the helm hard astarboard; that is, hard up. That is all the answer I have to give to that question. Capt'n did not say anything about keeping the land aboard that I remember; I saw the sails of the Newsboy were jibbed over when the collision took place; did not see them jib over; did not notice they were jibbed until the collision. Saw a torch-light on the vessel approaching. Capt'n gave orders to put the helm hard up at the same time I saw the torch-light. I was at the wheel after the collision. Don't remember seeing Manitowac light after the collision.

79 *Redirect.*

After the collision, and we were cleared up, the vessel headed up S. ½ E., and sails were trimmed by the wind; the main sheet had been slacked off and we hauled it aft. After the collision I don't remember how long we stood on that course; don't remember when we went about.

John Garret sworn:

I live at New Baltimore. I was 21 last October. Have sailed between 4 and 5 seasons. Capt'n Elsey is a relative of mine. Have been on the White Cloud since 10th of May, 1862. I remember this collision between her and

Newsboy. I was in the mate's watch. I went on duty that night at 6 o'clock. I think we had supper before going on watch. I was on the lookout with a man by the name of Roberts; I think that is his name. Our vessel was running by the wind close hauled. I did not see the compass during my watch. We took the wind forward of the beam. We were carrying a red light. There were some vessels astern of us; they were carrying red lights, those that I noticed. I made the light which turned out to be the Newsboy; it was a bright light. I made it over the starboard bow. I made it before Roberts did. I was standing between the foremast and forecastle deck on the starboard side. It was cold, and one had to keep moving around to keep warm. When I made the light I sung out light on the weather bow; that might have
80 been 15 or 20 minutes before collision; may be not so long; can't say exactly. When I made the light it was about 2 points or 2½ on weather bow, I think, but can't say exactly. As the vessels approached I made it more on the starboard. After I made that light I looked for other lights. I crossed backward and forward from windward to leeward. Made no other lights forward. The light I saw on the Newsboy was a bright light. I saw her show a torch-light; when I saw that she was not very far off; can't say exactly; she might have been 2 times her length off; I can't say; she then looked if she was coming right for us. Did not hear capt'n give any orders. Up to the time I saw torch-light our vessel had kept by the wind. When I first saw the torch-light I think I told Roberts she was coming into us; I think I stood still and looked at her a minute or so; I can't tell exactly; a very short time; I could not have counted many, not more than 20, while loooking at her. I next started aft part of the way; I walked and ran part of the way. I was standing looking at her a little abaft the mainmast when the collision occurred. During my watch I saw our mate walking fore and aft the deck; she struck us about the wind ship timber-head. After we got clear our sails were trimmed by the wind, hauled aft. I don't know where Roberts is; he said he was going to sea; he told me he was going to sea that night before the collision occurred.

81 *Cross-ex.*

I have sailed between four and five seasons. I got supper that night between ½ past 5 and 6, before I went on watch. Roberts and I went on watch together. It was dark when I went on watch. We had the light up. When I made the light on Newsboy I was standing between foremast and forecastle deck, about amidships. I suppose I was standing near the middle of the deck. Saw the light over the starboard bow, about over the cathead; I can't say exactly. I saw it before Roberts; about the same time he was standing alongside of me. I reported the light to the mate; he was on deck walking fore and aft. I think he and the capt'n were talking together about that time. I sung out to report it; the mate said he saw it. I could not tell whether they were talking or not; I paid no regard to them. I stood forward all the time. I saw the light kept growing bigger all the time, and it kept opening. I saw the torch-light before the collision. The light kept opening until I saw the torch-light, and then it was abreast of us; it did not seem to be far off then. After I saw the torch-light I stood still at first, and when I saw she was coming into us I started aft; that was a few seconds after I saw the torch-light; it was not thirty seconds, I think. When I got aft I did not do anything. I got a little be-aft of mainmast; the jibboom was about crossing our decks; at that time I heard her bobstays
82 cracking. I don't know when the jibboom crossed our deck; think it was between the forerigging and the foremast. I think so because the stay sail was split. I have been on lookout before; can see a bright light further than a red one. After the collision I saw the Manitowoc light.

I think I heard them talking that they thought the Newsboy light was Manitowoc light. I heard the mate say so a little before the collision. He came forward, and I asked him what light that was, and he said he thought it was the Manitowoc light. This was 4 or 5 minutes before the collision; may be not so long. Did not hear anybody say anything about it forward. Heard no one say anything about it aft. The mate and Roberts were all I heard say it was Manitowoc light. Roberts was about the fore rigging when he said so. The mate said to Roberts he thought it was Manitowoc light. The mate then went aft again. At that time heard no orders given on our boat. Did hear some just as we were coming together. I heard the capt'n tell the man at the wheel to put it hard up. Can't say how long after the collision I saw Manitowoc light. We had got under way. It then bore on our weather bow. I was not on the lookout then, and had not time to look after it. I don't remember seeing it till we were nearly abreast of it.

The above and foregoing is the testimony of the witnesses on behalf of libellant, Hugh Coyne, taken down by the undersigned, in open court on the trial of the case, by order of the district judge.

J. ELISHA WINDER,
U. S. Comm'r for the East. Dist. of Mich.

83 *Testimony for respondents.*

Edward Stanford sworn:

I reside in Milwaukee. I was capt'n of the Newsboy at the time of the collision. I went to sea in 1840; to England first. Came on the lakes first in the fall of 1850. Between 1840 and 1850 I had been sailing on the ocean. I served 4 years' apprenticeship, first in the coal trade. I have been cook, 2d mate, and mate, on the ocean. I was mate of a large ship between New Orleans and Liverpool for 6 months. In the fall of 1850 I made two trips from Racine to Twin Rivers before the mast. After the summer of 1852 I sailed the L. C. Irwin as capt. Have been master ever since 1853; in sailing vessels all the time. I have navigated Lake Michigan since 1853 most of the time. I am a little familiar with the coast of Lake Michigan. I mean to say that I know enough about it to navigate a vessel along. Am not familiar with all the ins and outs of it. Was nearly two years in Green Bay trade, but did not run close to shore. Have navigated Lake Michigan, Erie, and Huron since 1850. Have navigated the west shore of Lake Michigan up and down 9 years. I became captain of the Newsboy in 1862, when she first came out; that was the 1st season. Her tonnage is 557. Her length, I think, is 153 feet keel; 31 feet beam. The Newsboy was called a double top sail barque; some call her a schooner; she has three masts; she carries about 2,300 bushels of wheat. I have had that much in her. I know
84 the schooner White Cloud. I should call her 133 or 134 feet long. She has but two masts. On the night of this collision we were bound from Milwaukee to Buffalo, loaded with 21,000 bushels of wheat. We left Milwaukee at 8 o'clock that morning. Had 12, all told, in the crew. That was a full crew. Willis Abel was our mate. Christopher Mason was 2d mate. The evening along before the collision happened was dark and clear; no stars out, I think; no moon, I think; the sky was overcast; no smoke or haze on the water. We were going about nine miles for an hour before the collision happened. She had not been running that all day. The wind was W. by S. long before the collision, and at the time of it; and long before the collision the wind had not been steady; it had been W. by S. for an hour before the collision; it was steady during that hour, as near as I could see. I could see no difference in it in that time. I could tell by the fly, compass, and trim of the sails; that is all I could say. I had been on deck from the

time I left supper, which was about 6, until the time of the collision. The fly is the flag or vane at the masthead; it is made of bunting. We changed the watch at 4 bells, which is 6 o'clock. It was my watch then. Mason, the 2d mate; Pat. Brown, seaman; John Rouse, seaman; James Smith, seaman; Edward White, ordinary seaman. John Rouse was at the wheel. Edward White was on the forecastle. No one else that I know of. After
85 coming on deck at first I took no step towards ascertaining my position except walking the deck. I watched the vessel, compass, and wind. At 6.30 p. m. we took bearings for Manitowoc and Twin River lights. 2d mate took that observation. No one assisted him that I know of. I was walking the deck at the time, in front of the cabin. Manitowoc light bore west. Twin River light NW. $\frac{1}{2}$ W. This was at 6.30 p. m. After taking that observation the 1st thing I noticed on the lake was the red light under my lee bow. We passed that light; it passed to the leeward of us; can't say how far; 500 or 600 feet probably; it was not far off. When we took this observation our course was N.NE., and had been an hour previous; at least that was the course given to steer by, but I don't pretend to say that was exactly the course. She might possibly yaw a little. I do pretend to say she was making that course good. All vessels will yaw a little. Did not see her yaw more than $\frac{1}{4}$ point either way, but she might have been yawed farther. Can't tell how much vessels ordinarily yaw; it depends with the man at the wheel how far he lets her yaw. No vessel can be kept exactly on a given course. Did not know the vessel to leeward. After passing this vessel that passed to leeward I first noticed a red light to windward. That was about 8 or 10 minutes before the collision, in my judgment. When I first saw this light it bore off the port bow about two points; I can't say precisely; perhaps more or less. When I first saw it I was walking across the deck in front of the cabin. That was 42 or 44 feet
86 forward of the taffrail. After passing the vessel that went to leeward I saw this light, immediately. I walked forward on to the gallant forecastle on seeing the light. I was there 3 or 4 minutes, I should judge 3 minutes, when 2d mate came there. While I was there before 2d mate came, I was looking at the light. I had a night glass; I used it. When 2d mate came forward he asked me if I saw that vessel light to windward. I told him I was watching it. I don't think we altered the bearing of the light any. I went forward to watch that vessel's light. I told the mate to show him our torch and let him see our position. I saw some bright lights or white light before lighting the torch. They appeared to be lights from the window of a cabin. I fancied I saw more of the approaching vessel at the time, but think it rather doubtful. I told the 2d mate to extinguish the torch. When I told the 2d mate to get the torch I don't know whether he got it or it was handed to him. He had to go to the companionway of the forecastle to get the torch, from 12 to 15 feet. I don't remember rightly where he was standing; he put the torch over the port bow. From the time I told 2d mate to get the torch until he shewed it over the port side it was about $\frac{1}{2}$ a minute. While he was showing it I stood on the top-gallant forecastle. He showed it about $\frac{3}{4}$ of a minute, as near as I could tell. I then ordered him to put it out; he put it out. I then saw the White Cloud's light; it was on the port bow. It bore about the same as before;
87 it appeared to be 3 or 4 times the length of the vessel, probably; can't say. I could see the starboard side of the vessel, sails, and spars, and lights from her cabin. She appeared to be heading as near SE. as I could tell. I sung out, "Oh, my God, there is going to be a collision;" and sung out to man at the wheel to put his wheel hard up, and to the other vessel to luff. I sung out "luff" more than 2 times. I was then standing on the top-gallant forecastle. I got off the forecastle, started aft, and called

to the crew to get out of the way. I went aft as far as the front of the cabin; that was in the neighborhood of 100 feet, a little over, probably. I looked to see how the vessel was heading then; she was not quite NE by E.; about NE. ½ E. or between. The collision happened immediately then. I had stood by the compass 13 or 14 seconds or a very short time before the collision happened. When the vessels struck mine was heading NE. by E., as near as I could tell. I was looking at the compass at the time of the collision. By our time the collision was 10 minutes before 7 o'clock. I asked my steward while standing there. He was the other side of the cabin close by, if I recollect; there was no clock there; steward had to go the length of the hall, about 14 feet, to see the clock, on the same deck. He reported to me what time it was; he said it was 10 minutes of 7 o'clock. I did not see our jibboom go over the side of the other vessel. The vessels struck at an angle of about 60° between the sterns. I should judge
88 from where I stood that our vessel struck her on the starboard bow. When we struck our sails were on the starboard side of our vessel. At the moment of collision they had not jibbed over. After the vessels struck they swung close alongside. After the collision our sails jibbed over. At the moment I ordered my helm put hard up I could not have done anything else to avoid a collision. To have put the helm hard down would have had the effect to make her run into the other vessel stern on. At the time I gave orders to put the helm hard up I could not have helped my vessel with the canvass, I think, because the time was too short. To have helped her swing to starboard I should have had to let fly my spanker-sheet; to do that I should have had to send a man over the cabin, which is about 8 feet above the main deck. Standing on the main-deck front of the cabin you could not let fly the spanker-sheet; the cabin was aft, and the front of it 42 or 43 ft. from the stern of the vessel. I am in the habit of showing a torch-light in the vicinity of other vessels. My vessel has square canvass on the foremast; she has two jibs, fore-and-aft foresail, and fore-staysail, and four square sails. On the mizzen-mast she has spanker and gaff topsail. On the mainmast a mainsail and gaff topsail; the mainsail is a fore-and-aft sail. We had a patent wheel. She is a good steering vessel. We had 1 compass in the binnacle to steer by, and two in my room, (one of them was
89 visible from the deck,) that was in the forward part of the cabin. The wheel is abaft the cabin. It was raised so a man could see over the cabin. I know I gave the correct time and bearings by my officer; it was the 2d mate. From my own observations, I know the bearings could not be far off; if I thought they had not been right I should have gone to see myself. The foresail boom, where it joined the mast, was 4½ or 5 ft. above the deck, and at that time the end of the boom was more than 8 feet above the deck, and was over the deck. The end of fore boom was inside the rail if anything, and always is. We carried all sail but the fore staysail, and that was slewed up tight to clear the light. A fore-and-aft schooner by the wind on such a night would come up into the wind 500 times quicker than she would keep away. She would come into the wind's eye quicker than keep away two points without starting any canvass. She will come up quicker with helm down and no canvass started than she will keep away with helm hard up and main sheet let go. There was no sea to affect the movements of a vessel that night. All vessels that I have been in carry a weather helm when on the wind, but I have not been on many fore-and-aft vessels. I think I have as much experience of those particular shores as most any man that goes up and down the lake. I got it by my own learning. I have traded between Racine and Twin Rivers; 2 trips in fall of 1850, and 3 months in fall of 1851.

90 *Cross-ex.*

The Newsboy was the largest vessel I have ever sailed. I can't tell how many trips she had made. We were going down with her 7th load. The side of our vessel was out of water that night between 7 and 8 ft. Our cabin is 7 or 8 feet above the deck. The cabin has side lights, sky lights, and also lights in front. My room is in the front. John Rouse was at our wheel; he is in town. We got off into the lake, and sail on about ½ past 8 a. m. Had a baffling wind not fair in the middle of the day, but could go our course. In the forenoon we went 6 or 7 miles an hour, I can't say exactly. In the afternoon the breeze was more to westward; can't say how fast we went; may be 8 or 9 miles an hour; don't know. From Milwaukee to Manitowoc it is 75 miles. We took our course N.NE. at ½ past 5. We were then about 9 miles S. of Manitowoc. Took supper from ½ past 5 to 6. Our bell rings at 5½. Don't know whether I went to 1st table or 2d. 2d table goes as soon as 1st is through. Don't know who ate supper with me that night. After supper I came out on deck. It was in the neighborhood of ¾ of an hour before the collision. Stayed there all the time till the collision. I don't know whether 1st mate was on deck or not when I came on deck. It was about dark when I came on deck. Had no conversation with the officer on deck when I came on deck 1st. I walked across the deck and watched our vessel. I walked then backwards and forwards till I saw
91 that vessel light to leeward. During that time I don't recollect of having any conversation with the officer. The 2d mate was on deck then. The lookout made the light to leeward 1st, I think. It was about 5 minutes or less before it passed. He said a light to leeward, I think. I then went forward. It bore 2 or 3 points off the lee bow. If she had been 2 points, she would have been NE., if 3 points, NE. by E. She was ½ to ¾ a mile off when I first saw the light. It would not take 5 minutes to pass her if she were only that far off. I stood forward may be a minute after I made the light to leeward. I did not take bearings of it by our compass at any time. Did not stay there until she passed us. When she passed I was abaft in front of cabin. When the observation of Twin River and Manitowoc lights were made my 2d mate did it. He went to the binnacle because he could take the bearings better there than he could from my compass. I see my compass from the deck by looking through the glass. It is in the hall going into my room. I put my head in the hall to see the compass and look through the glass in the partition. When walking back and forth on deck I can't see the compass without looking in this hole. In some parts of the lake there is a difference in those compasses. There it would not exceed ¼ of a point. The 2d mate told me it was ½ past 6 when he took the bearings, and I know by my observation that it was about that. I was satis-
91*a* fied with his observations, or I should have gone myself. I went to one of my compasses to verify the observation of the 2d mate.

Question. Did you not in your direct examination say in substance that the reason that you did not look at the compasses when that observation was taken was because you were satisfied with the report of the 2d mate?

Answer. I don't know. I looked at my compasses both before and after the mate took the observation. I looked at them mostly every time I crossed the deck.

Question. Is it true that the reason that you did not look at your compasses to verify the observation of the 2d mate was because you were satisfied the observation was true?

Answer. I was satisfied with his observation. When the vessel passed to leeward I can't tell how long I had been back there. It is difficult to tell, and I can't tell. I cannot tell how long I stood there before that vessel

passed to leeward. I made the light to windward almost as soon as the vessel passed to leeward. It was about 2 points on my bow, more or less. I did not take its bearings. I think it was not far from 2 points on port bow. Think it was not outside of 2 points. Don't think it was more than 2 points on the port bow at any time before the collision. When I saw the light I walked forward. I left the 2d mate near where I was on the deck. I walked leasurely forward. I had a night glass with me. I watched that light all the time, with my night glass a number of times. I saw a
92 sort of blaze of lights, as if it came out of a sky-light or cabin. I thought at the time it was her cabin lights. I did not think at the time it was a side light. I have seen the White Cloud since I have been here. Did not go on purpose to see her. I went to see a barque. I went on to the barque, but not on to the White Cloud. I went on the vessel alongside of the White Cloud. When I saw the blaze of lights the vessel was off in the neighborhood of a mile. I could not see how she was heading. All I could tell was by her lights with the wind I had. Don't think I could tell whether it was a barque or schooner. I imagined it was a schooner, but I leave that out now.

Question. Could you not see that she was a fore-and-aft vessel, and heading to the W. of S.?

Answer. I could not say that I could see that it was a fore-and-aft vessel, but I felt certain she was heading to W. of S. by her lights. I have said that vessel was 3 points on port bow when I made her. I have sworn so, or in the neighborhood of 3 points. Did not say 3 points exactly. When I so swore I thought that was about the bearing. I so swore 2 or 3 days after the collision. I said a moment ago I did not think it was over 2 points.

Question. Did you not at the same time swear that both of us (meaning myself and 2d mate) could see that it was a fore-and-aft vessel heading S. by W., or S. by W. ½ W.?

93 Answer. I did. Now I don't think that could be true. My imagination was strong, and afterwards my 2d mate told me he did not see it. That changed my opinion, that he could not see it. My opinion is that I could see it. My mind hangs that way, but I am a little mixed. I could not be mistaken in supposing that I saw the port cabin lights. I ain't mixed about that. I did see them, and could have done so if she had been heading south, I think.

Question. If you could see that vessel's port cabin lights, your vessel was off that vessel port bow, was she not?

Answer. Yes, sir. When I showed my torch-light that vessel was probably 1,400 or 1,500 feet off; she might have been less, and might have been more. Up to the time I showed the torch-light I had made no other red light ahead or on either bow. I think she could not have been heading S. by E. and I have seen her port cabin lights.

Question. Have you not said you could her light, her head light was a good one, could see cabin lights in her port side?

Answer. I don't think I said it in that shortness. I think I said I saw the lights to the port side of her red light. I don't think I said that in this examination. Don't think I was asked it.

Question. Did you not swear that you could see cabin lights in her port side?

94 Answer. I don't think I did.

Question. If she was heading the E. of S. could you see her cabin lights to the port of her red lights?

Answer. I think I could. When I first saw her lights my judgment is she was heading to the westward of us. I mean by that her cabin lights. Don't know as I saw her lights all the time until the collision. I may have looked

off a second or so; but except that, I saw her red lights all the time until I lit the torch, and could not see it then. Up to the time I lit my torch I can't say I saw any change in her course. She kept the same bearing on my bow. At the time I lit my torch she was about 2 points or inside of 2 points off my port bow; about the same bearings she had been all the time. I thought she was going well clear to windward, and told the 2d mate so. Saw nothing of this vessel or her lights while my torch-light was burning. When I lit the torch I don't say that I could see her cabin lights; saw them when I first went forward, and afterwards I lost them. When I saw these lights they were very close to the red light; they would be inside of the rigging, close by the main rigging, as near as I could judge. When I told the mate to show the torch-light I think she was off 1,500 to 1,600 feet. It took the 2d mate ½ a minute or so to get the torch and light it. It will burn
95 about a minute and show a good light. We let it burn from ½ to ¾ of a minute. While it was burning I stood on the forecastle, not doing anything. The reason I could not see the other vessel was the glare of the torch-light in my own eyes. I stood there from ½ to ¾ of a minute without seeing anything of her at all. During the whole time that light was in sight I had not looked at my compass. I did not take her bearings by compass at all. While I was looking at that vessel I did not look at my fly; could not have seen it if I had looked; it was not too dark to see the fly. After I saw the light I did not go to my compass to determine the direction of the wind; the wind had not been baffling; it might have changed a ½ a point or so and I not know; it was as steady as it ever is. A vessel by the wind can tell the direction better than one with a free wind. I judged the wind to be 3 points abaft our beam. We were heading N.NE.; it was not more than 3 points abaft our beam. While I was watching that vessel the wind could not have changed a point or two and I not noticed it.

Question. When you made the cabin lights of the approaching vessel close to the red light on the port side how did that signify that the vessel was heading in reference to you?

Answer. That she was looking up a little to windward of me; the way the wind was. She was nearly north from us. A vessel carries a red light when the vessel is on the wind and on starboard tack.

96 Question. Is it not the duty of a vessel to carry her red lights whenever the wind is forward of the beam and she on the starboard tack?

Answer. Yes, sir.

Question. If the wind is W. by S. and a vessel is going S. ½ E. does she not take the wind forward of the beam and on the starboard side?

Answer. Yes, sir. I made no other lights but this one for 10 minutes before the collision.

Question. You swore in your protest that you made that light about 3 points on your port bow. You swear on this examination that you made it not to exceed 2 points. When did you change your opinion on that subject?

Answer. I changed my opinion last summer, after the libel was filed, and I come to place the vessel, and I found I got her too far to windward. I did not find that I could not possibly get her across my track in the way I thought she come. I have talked with no one in regard to my getting that vessel too far to windward. (The witness here locates the vessels as marked in Schedule No. 1, and says that is about the position of the vessels as sworn to in his protest. See Schedule marked No. 1.) There is a flash light at Manitowoc. The light-house is pretty high up. There is no light-house at Twin Rivers. You can see Manitowoc light about 12 miles off. There is an ordinary hand-light hung on the pier at Twin Rivers, 12 or 14 feet
97 above the water. There is no government light there. I had 2 torches on my vessel. Don't know whether they were both lighted the night

of the collision; I only saw one. If another had been burning when I went aft I should probably have seen it. When I started aft I was a little alarmed; not so much as while sitting here, though. I am a nervous and excitable man. I was not afraid of my vessel going down. I thought very likely I might sink the other one. When I started to run aft I thought of going to my compass; I wanted to see particularly how we were heading; just to see how she was heading while the other vessel was in sight. That is the first I thought of going to my compass to see how the vessel was heading before the collision. It was after the collision I told the steward to look at the clock. The 1st thing I did after the collision was to ask the steward what time it was.

Question. Then, capt'n, you say that in such a moment of anxiety and peril the 1st thing you thought of and did after the collision was to tell the steward to look at the clock?

Answer. I won't say it was the 1st thing I did. I got to the compass 6 or 8 seconds before the collision. I was there a little time first. My compass was then swinging.

Question. When a vessel is swinging off rapidly does the compass show the exact heading, or is it not behind the swing of the vessel?

Answer. It does not show the true heading of the vessel; it is be-
98 hind it. We had 2 ordinary seamen on our vessel; they were 16 or 17 years old. One of them was on the lookout. Had no able seamen on the lookout forward. I think they were 16 or 17. I do not know where the other boy was. All the crew was there when the protest was read. I don't think the protest was written in the presence of the rest of the crew. I don't know whether the lookout and wheelsman swore to and signed the protest.

Question. Haven't you often seen vessels a few miles distant from each other have the wind 2 or 3 points different?

Answer. I have in very light wind; but at no time when the breeze was 7 or 8 knots an hour. That very afternoon I think the wind was variable at very short distances. I don't think that we were running at less than 6 miles an hour that afternoon, and I don't think we were less than 7 miles. The variation of the compass in that part of the lake is from a true north line. I don't think it will exceed ½ a point or 3° or 4°. It runs a vessel to the eastward of a true south course, and to the eastward of a north course. I have no boom tackle on the foreboom Have seen no measurements taken about the White Cloud's deck since I have been here. Including myself, 8 of the crew have been here to attend this trial. I noticed my fly after supper; it tailed about 3 points forward of the beam. We were going about 9 miles an hour.

Question. What is the difference between the true and apparent direction of the wind as indicated by the fly of a vessel running as yours was
99 about 9 miles an hour, and the wind was as you say W. by S.?

Answer. I don't know. While I was standing forward watching the light of this vessel I will not say that my vessel did not yaw at all.

Question. When you are approaching a vessel made 3 points on your starboard bow in the night and her light does not alter its bearings to you how does it signify she is heading in reference to your course?

Answer. I mean that they are both heading for about a common point, which they will reach nearly at the same time. A fore-and-aft vessel light will make, with the wind as it was that night, from ½ a point to a point lee way. Our yards were trimmed with weather-braces a little in. I mean by that the starboard end of the yard was hauled in a little farther aft than the other end. When the vessels separated my vessel swung around to starboard, and came nearly head to wind with her square sails aback heading

to southward. She lay there, I think, about 20 minutes; cannot tell exactly. I noticed one vessel nearly run into us when I lay there. I don't know which side she went of us; she went to southward. When I saw that vessel we were heading into land. I think she passed me on the starboard side, but am not certain. I think I was on the port tack, but am not certain. I showed 2 torch-lights to her. I don't recollect how that vessel passed me.

100 I was not excited. I never get excited on a vessel. Saw no other vessel with a red light. When the torch-light went out I can't tell exactly how far they were off; probably 4 or 5 times their length. They were from 300 to 400 feet apart, more or less. She was heading to cross our bows, not far from ⅔ the distance between us.

To judge: I put out the torch-light to see if I could see the other vessel. The other vessel was about 2 points on my port bow. When I saw this vessel at that time I don't pretend to swear into 1 point or 2 points how she was heading, but give my best judgment. My vessel would be apt to keep away quicker than she would luff; as her canvass was she would not luff quickest.

Question. You had 200 feet, more or less, to go before you crossed her line of direction. In going that distance, as you were going, how much could you luff your vessels?

Answer. From 2 to 3 points, I should think.

Redirect.

I was showing a bright light that night.

Question. In your protest you state "could also see cabin lights on her port side." What did you mean by that?

Answer. Port side of her red light, I meant.

Question. How near to the red light did this light you call the cabin light appear?

Answer. As near as I could see I should think 4 or 5 feet. I couldn't say that I saw a steady light from her cabin in some shape. The com-

101 pass is in my room and is close to the front of the hall. Part of my room runs alongside that hall. It is not necessary to step into the hall to see the compass. As I walk the deck I look at the compass by putting my head in. The compass is on a shelf in the corner of my room and against the partition. I have to look through a glass to see it. I put it there myself to see if the man at the wheel was steering his course; it is a guard compass to watch the man at the wheel. The protest was made in Milwaukee. In giving estimates of time and of distances I have not meant to do so accurately but only my best judgment.

Question. You stated on your cross-examination that a vessel by the wind can tell where the wind is better than one before the wind. Why?

Answer. A vessel by the wind can tell how close she lays to the wind, provided she lays within 6 points of the wind; a vessel before the wind a man has got to stand by his compass, and looks to his fly. I can tell within ½ a point. When a vessel is sailing by the wind the usual order to the man at the wheel is to keep her full and by; he is then sailing without reference to the point of compass; his attention is most directed to the trim of his sails, more than to his compass. When I spoke of my fly tailing off I meant to give its directions according to my best judgment.

Question. With a vessel going, say 9 miles an hour, and the wind abaft the beam, will the fly tail forward or aft of the true direction of the

102 wind?

Answer. I don't know.

Question. Which can be steered most certainly, a course with the wind over a vessel's quarter or by the wind?

Answer. With the wind over a vessel's quarter that is what we call a dead course. I don't think my vessel would have yawed ½ a point either way from her course that night. When I spoke of yawing that is what I meant. All vessels, I think, will yaw that much. After the collision I noticed the direction of the wind; it was in the neighborhood of 20 minutes after the collision when I noticed it. We were heading S. by W., with a good rap full. At that time the wind was W. by S. At the time I was heading S. by W. I was in such position as to be able to judge accurately where the wind was. At that time the wind was a little lighter, and got lighter all the evening. When I left the forecastle deck and went aft, just before the collision, I think I walked. At the time of the collision the Manitowoc light was a flash light. I am not nervous and excitable on shipboard. At the time the 2d mate took the observations in reference to the Manitowoc light or lights in shore, I know very nearly how my vessel was heading. The vessel which passed to leeward showed a red light. The wind that afternoon at one time varied to northward so we had to brace the yards up. I can't recollect what time that was; it was someway after dinner. When my sails were aback after the collision my vessel was then heading very near to the wind, somewhere in the neighborhood of SW. by S. I did not look at the compass. My
103 vessel was not making any way through the water then except steer and leeway. Laying in that position with her sails aback, she would lay about 4 points in the wind's eye; she would fall off and come up; she would not be under my control. My signal light was placed on the night heads. It was a Felt, Hosmen & Russell light; that is the best kind. Edward White was the name of the boy on the lookout forward; he was 16 or 17, I should judge; he was a very good boy, a good ordinary seaman. The duty of a lookout is to report all lights and everything they see. When I first made this vessel's light and went forward I had looked at my compass most instantly before going forward. My vessel was on her course then, or so near it I could not find any fault. She was close to her course. As near as I could see she was on her course. I don't think she was 1 degree off either way. 1 degree is about an 11th part of a point. When I have spoken of swearing about anything I only referred to my protest.

Recross.

Question. You state that when a vessel is sailing by the wind she is then sailing without reference to the point of compass. Is that the way you sail your vessel?

Answer. When I tell the man at the wheel to steer by the wind he is to do so, and watch the compass, and when the 2 hours are up he is to know what course she has made.

Question. Then, sir, when you are sailing by the wind you watch your compass just as close as you do when sailing with a free wind, do you not?

104 Answer. I do.

Question. It is not true, then, that when sailing by the wind you sail your vessel without reference to the point of the compass, is it?

Answer. When I gave my testimony before, I referred to the man at the wheel. I, of course, sail my vessel by the compass. I saw these cabin lights on the White Cloud on the port side of his red light.

Question. Did you see those lights between the foremast and forerigging of the White Cloud or over her side abaft the forerigging?

Answer. A little outside of the forerigging, as near as I could judge; I could not see the forerigging. I think myself and all the crew were present when I swore to the protest. I did not take the majority of the crew up 7 days afterwards and have them swear to the protest.

Re-redirect.

I swore to the protest in Milwaukee, in Mr. Hibbard's office; I think all the crew were present then; do not remember of any of them going there afterwards and swearing to it; if they did, I was not with them. I am certain they were all with me when I swore to it.

Christopher Mason sworn:

I live in Ashtabula, Ohio; I am a sailor; have sailed 11 years on the chain of lakes. For the last 8 years I have been an officer. I have traded up
105 and down the west shore of Lake Michigan for 9 seasons. I was 2d mate of the Newsboy, and was in her at the time of the collision with the White Cloud. It happened in my watch, or the starboard watch. That watch went on at 6 o'clock in the evening. I can't tell the name of the man in it. John Rouse was at the wheel; the boy Ned was forward on the look-out; I don't know his other name. We had a full crew at that time. It was a nice night; no stars visible; the sky was overcast; it was clear on the water; the water was nearly smooth; may have been a little sea from the SE. After I came on watch I took observations to ascertain my situation on the lakes; that was at ½ past 6. In taking that observation I observed the bearing of 2 lights—Manitowoc and Twin River Point. Manitowoc light then bore due west; Twin River light NW. ½ W.; I looked at the clock then myself; I took these observations myself. Our vessel was on a N.NE. course; I know that, because I looked at the compass myself; I looked at a compass in the binnacle in the after side of the cabin. When I came on watch our vessel was on a N.NE. course; I know that, because I looked at the compass and saw she was there. After I took this observation the 1st light I made on a vessel was on a vessel on our lee bow; that was 8 or 10 minutes after I made the observation. We passed that vessel; she passed to leeward. When I took this observation the wind was W. by S.; I noticed it particularly; that
106 was part of my duty; there was a good nice breeze; the vessel was going along about 9 miles an hour. From the time I took the observation until the collision the wind was about the same; I speak of the direction and force of it both. At the time this vessel passed to leeward I was standing just forward of the cabin; I presume I was standing there. I next noticed in a short time another vessel, on our weather bow, showing a red light. After the vessel passed to leeward I think it was nearly 3 minutes before I first saw this red light; that light bore about 2 points off the weather bow when I first saw it; that was about 8 or 10 minutes before the collision. When that light was 1st made our vessel was on a N. NE. course; I know that by looking at the compass; I generally look at it every minute or 2; I speak of the compass stationed in the forward side of the cabin. After seeing the light on the port bow I went forward 1st and asked the capt'n if he saw it; he said he did, and was watching it. The capt'n had gone forward before. After I first saw the light I think it was 2 or 3 minutes, 2 minutes probably, before I went forward. During the time I stood aft and watched this light I think it bore from us about the same; I could see no variation in it. After I had gone forward and spoke to the capt'n, the next thing I did was to go on the forecastle, and I stood there a short time, and the capt'n told me to show the torch-light. I think I stood on the forecastle 3 or 4
107 minutes before the capt'n told me to show the torch-light. I could not see in going from aft to forward certainly whether the light had changed any, but should think it had not; I could not tell in going from aft to forward, because a man would not have the same range forward as he would aft. When capt'n told me to show the torch-light I told one of the men to get it; he lit the light, or he passed it in the forecastle, and it came back

lit. Then I showed it over the weather bow; held it down to show the hull and up to show the canvass. From the time capt'n told me to show the torch-light until I did show it. I should think it was from ½ to ¾ of a minute—½ a minute any way. During that time I could not see any change in the bearing of the light up to the time I lit the torch Before I lit the torch I saw another light on the approaching vessel besides the red light. I saw what I supposed to be a light in her cabin just to leeward of her red light; it appeared to be 5 or 6 feet from the red light, or seemed to be so; it was a bright light; I could see it was not a red or green light; I mean a clear light; it was a white light; it was not a very bright light; I judged it then to be a light in the vessel's cabin. At that time I could not see anything of the sails of the approaching vessel. After showing the torch-light ½ or ¾ of a minute capt'n ordered the light put out. I put the light out and looked
108 at the vessel as soon as I could see her; could see that she was keeping off and looking across our bows. I could then see the hull of the vessel, and also the sails of the vessel. She then appeared to be not more than 2 or 3 times her length from us. Capt. Stanford then told the man at the wheel to put our helm hard up, and sung out to the other vessel to put their helm down, and was answered by the man at the wheel; he sung hard up, I think, sir. When Capt. Stanford hollowed to the other vessel he hollowed to them to luff. When Capt. Stanford told the man at our helm to put it hard up it was not a minute before the collision; it was some seconds. At that time I don't think anything else could have been done by Capt. Stanford to avoid a collision. If our wheel had been put down I think we would have struck that vessel stern on and some further aft than we did. I think that would have been a severe blow. Under those circumstances I think our vessel would luff quicker than she would keep away; I mean our vessel, I think she would luff quickest under the circumstances. The effect of putting the wheel up made our vessel swing to starboard and hit the other vessel a glancing blow. There was not time before the collision to help our vessel swing to starboard with the canvass. From the time I took the observation down to the time Capt. Stanford gave the order to put the helm hard up, I did not give any orders or hear any orders to change the course of our vessel. I don't think there had been any change in our vessel
109 during that time. After the capt'n told the man at the wheel to put it hard up I don't know that I did anything but look at the vessel approaching. I stood on the forecastle deck until the capt'n piped all hands aft to get out of the way of her. I went aft with the party. I got aft nearly as far as the mainmast I went aft on the port side. Can't say whether I walked or run; think I started in time to get there without running. When I got there the two vessels came together. I saw them when they struck. They struck at an angle of about 60° between their sterns. At the time of the collision I should think our vessel had swung off as much as 3 points; that is my general judgment. I did not see any compass. Our sails did not jibe over before we struck her. I stood where I could tell that certainly. Our vessel swung alongside of her and continued to swing to starboard, and then headed up the lake again. After we got headed up the lake we took a S. by W. and S. by W. ½ W. part of the time; that was in my watch. We came around and lay aback about 3 or 5 minutes, and then we braced up and trimmed our canvass and stood off on the starboard tack. When we got on the starboard tack I should think it was 8 or 10 minutes after the collision. The wind was then W. by S., about the same as it had been. Capt'n sung out for them to luff 3 or 4 times. I know the White Cloud and knew of her at that time, but did not recognize her then. There was nothing at that time that I know of to prevent her luffing. The

110 White Cloud would luff quicker than keep away; I think as quick again or more than that; I mean without starting any canvass. I think a vessel would luff and come into the wind's eye as quick as she would keep away 2 points without starting any canvass. Vessels by the wind generally carry a weather-helm to prevent them coming into the wind. At that time I had made that trip in the Newsboy I joined her in Buffalo. When the order was given to put the helm hard up (witness locates the vessels) so that the heading of the White Cloud was about on the end of the jibboom of the Newsboy, and by compass about S.SE., and we were on our course N.NE. I do not know which would luff quickest under those circumstances, but think the White Cloud would, as she was light, and light vessels luff quicker than loaded ones. The boy Ned was a good hand in his place, an old boy for his experience, a good boy for a lookout; he kept a good lookout; it is usual to put boys of that age on the lookout. The lookout has to keep lookout and report lights to the officer of the vessel.

Cross-ex.

I am 27 years old. Left Milwaukee and got under way about 8 o'clock. We went in the morning 6 or 7 knots an hour. We steered no regular course, but kept the land aboard. In the afternoon the wind freshened and we made 7 or 8 knots, and again about 4 the wind freshened again,
111 so we made 8 or 9 knots. I don't think we were going 10 knots. A full crew on our vessel, all told, is 12 men; 3 men and a boy in each watch; 6 men and 2 boys before the mast is a full crew for our vessel. She is one of the largest vessels on the lakes, there are some larger. She is not the largest vessel I ever sailed in. I have sailed on the Golden West, of Milwaukee; she will carry 26,000 bushels and more. When I made this observation I should think we were off Manitowoc 5 or 6 miles, and a little further off Twin Rivers. I made a light on the pier at Twin Rivers. I saw 3 or 4 lights ashore. Saw a bright light at Twin Rivers that night, not so good as the one at Manitowoc. I got supper that night between 5 and 6 I think. We usually get supper at ½ past 5. Don't remember much about it that night. Got supper before I went on watch. I don't remember who first made the light to leeward. I am sure capt'n and I made it before it was reported. I did not go to the compass to take its bearings; it was perhaps 2 points on the lee bow, and between ¼ and ½ a mile; I don't know but further; it is pretty close, but we make plenty of them not further off than that; that was a good light. You ought to see a good red light 3 miles. I think capt'n and I made it before it was reported by the lookout. Capt'n and I went down to the lee rail by the mainmast; did not
112 wait there until she passed; we walked across the deck. I think we kept walking thus until she passed. I think neither capt'n or I went forward when we made the light on the lee bow. I am not positive. I think the capt'n made the light to windward 1st; he did not say anything to me when he made it. I made it perhaps 2 or 3 minutes after the capt'n did. I suppose the capt'n made it when he went forward, but can't tell exactly when he did make it. I heard no report of that light from the lookout. Heard no report of it from him until I went forward. He did not report it to me then.

Question. Do you call that keeping a good lookout for the lookout to allow a vessel carrying a good red light to come within a ¼ or ½ a mile on the lee bow, and one to be made to windward by the officers aft, and neither light reported by the lookout, on such a night as that?

Answer. I don't know but it was; officers generally make lights before a lookout does. As a seaman, though, I don't consider that keeping a good lookout. When this light was made to windward I think it was about 2

points. I don't think it was more than 2 points. I could not swear but that it was more than 1½ points, but don't think it was more than 2 points. 3 days after the collision I don't think I thought it was 3 points. I don't think I swore so.

113 Question. Didn't you swear in your protest, "Saw a red light to windward about 3 points on the port bow?"

Answer. I swore to the protest, but am not aware I swore to a light 3 points. When I made this vessel I could not see how she was heading at any time before I lit the torch-light; could not see she was a fore-and-aft vessel. Could not see the vessel to tell she was heading S. by W. or S. by W. ½ W.

Question. Did you not swear in your protest, made 2 days after the collision, "that we both (meaning the capt'n and yourself) could see it was a fore-and-aft schooner, heading about S. by W. or S. by W. ½ W.; could see her cabin lights on or in her port side?"

Answer. I don't know whether I swore to it or not.

To judge: I have not seen the protest since I swore to it. Have not heard it read, or any part of it. I have not heard the subject of it talked over by any one. Capt'n and I did not talk about it, and did not disagree about it.

Question. Did the protest you swore to contain a true statement of the facts as you understood them?

Answer. It did so far as I understood it. I heard it read over. My

114 recollection of the facts was more fresh then than it is now. When I saw those cabin lights I think the vessel was ¾ of a mile off. Did not see them as soon as I saw the red light. I should think it was 3 or 4 minutes after. By her lights I judged she was heading to the W. of S. I looked at her and saw those cabin lights 2 or 3 minutes, or all the time until capt'n told me to get the torch-light; they kept nearly the same distance to port of the red light. I think they kept about the same bearing to our vessel.

Question. Is it not the duty of a vessel on the starboard tack when she takes the wind forward of the beam to carry a red light?

Answer. Yes, sir.

Question. If the wind is W. by S. and a vessel is heading S. ½ E. does she not take the wind forward of the beam?

Answer. Yes, sir; ½ a point forward of the beam.

Question. Is it not the duty then to carry a red light under such circumstances?

Answer. Yes, sir.

Question. If a vessel running as yours was that night makes a vessel's light 2 points on the port bow, and the vessels run for 6 or 8 minutes without the bearing altering, how does that show that those vessels are running in reference to each other?

Answer. It shows the vessels are running down on to each other—towards a common point.

Question. Doesn't it show that if they continue on without altering

115 the bearings that they will come together?

Answer. I don't know that it does.

Question. If they continue the same bearing will they not run together?

Answer. They will.

Question. If your vessel with a free wind makes a red light on your port bow, and you run for 6 or 8 minutes without altering the bearings, isn't it your duty to change the course of your vessel at once?

Answer. It is our duty to change our course, and we did. The vessels were close together when we changed our course, and the collision happened immediately after.

Question. If you had changed your course 5 minutes before the collision couldn't it have been avoided?

Answer. Yes, sir; it would if the other vessel had not followed us as it did.

Question. If you had been in command of the Newsboy and saw these 2 vessels approach for 6 or 8 minutes without altering the bearings of the light, would you not have changed the course of your vessel at the time or before you showed the torch-light?

Answer. I don't know how that would have been. I don't know as I would.

Question. And yet you knew under those circumstances that if these vessels kept on and the lights kept the same bearing that they would probably be a collision, did you not?

116 Answer. I did not.

Question. Didn't you tell me a few minutes ago, under these circumstances that there would probably be a collision?

Answer. Yes, sir; I did, but I did not figure it down that night as I have now.

Question. As you have figured it down now is it not your opinion that good seamanship would require your vessel under those circumstances to alter her course at or before the time she showed the torch-light?

Answer. I don't know but it would, sir. A fore-and-aft schooner going 6 or 7 miles an hour or a wind will make ½ a point leeway, sometimes more; there are not many that make more in smooth water. I knew they would make leeway that night. I don't know as I saw only one cabin light; it did not look like a lamp hung in a sky-light; it looked like a window light. I think it was a light on the port side of the vessel; it must not have been more than an ordinary light; I must have seen it perhaps outside the fore-rigging. I don't know whether I looked at this vessel through the capt'n's glass or not; I don't remember.

Question. While you and the capt'n were forward there, looking at this light, was there anybody but a wheel-man watching the compass on your vessel to see if she kept her course or not?

Answer. I think there was not, sir. My attention and capt'n were
117 principally directed to this vessel while standing there. It is possible our vessel might have changed her course a point either way, and I not have noticed it, though we probably should, as there were lights ahead and astern of us. I was not paying any particular attention to lights astern. Had not seen any other lights ahead. When I lit the torch-light I lost sight of this other light; that was because the glare of the torch-light blinded us, and not because the other light was out. It is a general thing when the capt'n and 2d mate are on deck for the 2d mate to light the torch. I think it is usual for the other officer to stand in such a position that he cannot see the other vessel. You might stand in most any position in the vessel and yet the torch-light blind your eyes. We had 2 torch-lights on our vessel. I don't think they were both lit before the collision; they might have been lit, and I not know it.

Question. When you and the capt'n stood there with the torch-light burning and eyes blinded so you could not see the approaching vessel, and away from your compass, might not your vessel have changed her course a point or more and you not know it?

Answer. She might have changed her course while the light was burning,
but when the light went out I should have known it. As soon as the
118 light went out I saw there was likely to be a collision. I don't know as I stopped then to take any observation whether our vessel had changed her course or not. When capt'n ordered me to get the torch-light

this vessel was off perhaps ¼ of a mile—perhaps not so much, and perhaps more. I have no means of judging how long the torch-light burned excepting memory now. Time under such circumstances is apt to seem longer than it really is, I think. When the torch-light was put out I could see the White Cloud was swinging to eastward. I could see the vessel had swung off and I think was swinging off.

Question. If she was swinging to the eastward at the time, she could not luff then as easy as she could keep bearing away, could she?

Answer. I think a vessel could luff quicker at that time. It is natural for a vessel to luff.

Question. Do you mean to say that a vessel keeping away with her helm hard up can stop her swinging and luff quicker than she can keep away still further 2 or 3 points?

Answer. Yes, sir; I think a vessel by the wind would do it. I don't think she would swing away 2 points before they could stop her swinging. She would not swing more than a point, I think, before she would stop swinging. A light vessel will stop quicker than a loaded one. I think a light vessel will luff quicker than a loaded one. I think that is so with our vessel and with all vessels. There never was difficulty in
119 our vessel luffing when light. I have known vessels to find difficulty in luffing and going about in a big sea, but not in smooth water. Capt'n went aft first before the collision; he was perhaps 50 feet ahead of me; he was a little ahead of me. After the collision we made other red lights; we made 1 or 2; I don't know exactly; one was while the vessel was lying aback and before we got braced up on the other tack. Up to the time of collision the lookout had reported no other lights, I think. I think no sails were carried away on our vessel by the collision.

Redirect.

We were showing a clear light that night; it was on her head rail or knight head. The collision occurred a little before 7 o'clock. It is usual to carry boys of that age on ships of that kind. The capt'n when he stood forward before the collision was not excited; he was cooler than men generally. The collision carried away her flying jibboom, bobstays, and forestays, and her stem and figure-head; it carried away everything forward but her bowsprit. I don't remember whether it hurt any of the head rails or not; did not bad, if any; carried away the flying jibboom, and other damages rendered the forward sails unserviceable so we could not use them at all. The torch
120 is made of turpentine. One torch would burn about 5 minutes. Can't tell how long it would take for one to burn clear out. I should think it would last 2 minutes before the turpentine would burn off. I was put out that night. I mean to say I did not hear lookout report the light, but it might have been reported. When I heard the protest read I had been at work on a vessel, and just went to the office long enough to hear it read. I did not understand it as giving a precise description, but only a general one.

Question. If your vessel was going N.NE. at a rate of 9 miles per hour, and the White Cloud was going S. ½ E. at the rate of 6 or 7 miles an hour, and you kept your course and ran on 5 or 6 minutes and the bearing of the light on the White Clould continued the same, must not the White Cloud have changed her course and kept away?

Answer. Yes, sir.

Question. If the White Cloud under those circumstances had kept her course S. ½ E. would there have been any collision?

Answer. I think there would not, sir. It was her duty to keep her course.

Question. When a vessel whose duty it is to keep her course changes it

and violates the rule of navigation, can an officer on the other vessel calculate on what she is going to do?

Answer. He cannot, sir.

Question. Under such circumstances is it good seamanship to show
121 a torch-light to a vessel thus violating a rule of navigation?

Answer. It is, sir.

Question. You spoke of seeing a light on the port side of a vessel. Did you mean shining out of her port side or only placed on the port side of the vessel with reference to the wind ship line?

Answer. Placed on the port side with reference to the wind ship line.

Question. A light approaching you as the White Cloud's light did and not changing its bearings, could an officer on the deck of the Newsboy under such circumstances and without knowing the speed or load of the White Cloud, calculate with any certainty how much she was keeping away?

Answer. He could not, sir.

Question. Under such circumstances, and without knowledge of how much the White Cloud was changing her course and keeping away, could an officer on the Newsboy tell with any certainty what to do?

Answer. I don't know as he could, sir.

Question. Is it nautical for a vessel under the circumstances of the White Cloud to luff?

Answer. It is, sir.

Recross.

Question. If the White Cloud in a wind is steering S. ½ E. make a point lee way, on what course is she actually passing over the land?

Answer. S. by E. ½ E.

122 Question. If you made the White Cloud two points off your port bow, how did she bear to you by compass?

Answer. She bore north, sir.

Question. If that is so, and she is heading S. ½ E. and is making lee way of a point, is she not actually pursuing a course to cross the course of your vessel some distance in advance of your vessel?

Answer. She is heading across the course of where our vessel would come.

Question. If, as in the answer to one of Mr. Hibbard's questions, it is presumed that you knew that the White Cloud was keeping away for 6 or 8 minutes, wouldn't you have been perfectly certain to have avoided a collision by putting your helm astarboard and luffing any time from 3 to 5 minutes before the collision.

Answer. If we had known that vessel was going to continue to keep away, we could have luffed and gone to windward; it was not to be supposed a vessel by the wind would do so. I had noticed no change in the course of the White Cloud up to the time I showed the torch-light. Our head sails were all gone so we could not use them. We can work our vessel in a wind without her jibs. That protest as read over to me did not contain anything untrue to my knowledge. I don't swear to anything I don't know to be true. I don't know that I gave attention enough to the protest to know whether it contained anything untrue or not. I don't know but that
123 I did not notice that it contained some things that were not just so.

Re-redirect.

We cannot work our vessel so close to the wind without jibs. When the protest was read I was in the notary's office, 5 or 10 minutes probably.

John Roust sworn:

I live in Milwaukee. I am a sailor. Have been a sailor 25 years. On salt water about 15 years, on ships, on schooners, and men-of-war. On men-of-war 3 years and 4 months in the English service. Have been on the western lakes between 8 and 9 years; on Lake Michigan most all the time. I was on the Newsboy at the time of the collision with White Cloud, in 2d mate or capt'n's watch; went on watch at 6 o'clock. Had supper before that. The vessel was then on N.NE. course. I staid at the wheel from that time until the collision happened. I partly guess how the wind was, it was W. by S. It was not my business to look at the wind, but it was well off the land. I saw a light before the collision just about between our foremast and forerigging on our port bow; it was a point or little more. I first saw it, I guess, not ten minutes before the collision. When I first saw the light my vessel was on a N.NE. course. Soon after seeing a light capt'n ordered me to put the helm hard up. When I got that order my vessel was on a N.NE.
124 course. She had been on that course all the time from my coming on the watch up to the time I got that order. When I stood at the wheel I was about 3 f't or 2½ from the compass; kept my eye on the compass. When capt'n gave me the order to put the helm hard up I put it hard up and answered the order. I got it hard up hard. I suppose my vessel swung off about 3 points before the collision. I got it hard over before the collision. I kept it up with one hand before the collision. Our sails did not jibe over before we struck. When she struck the sails and all jibed right over; could not say how long after she struck before the sails jibed over; it wasn't long. I remained at the wheel after the collision. After we were taken aback and we braced up on the other tack and after the collision, we came upon a course S. by W. ½ W. Kept that course, I can't say how long. We took another course after that. I saw torch-lights all around on my vessel before the collision. I mean our lights shone around the deck. I was not looking out for lights, and had no business to. I was looking out for my course.

Cross-ex.

I had been on the Newsboy about 5 months. Went on watch at 6 o'clock. Can't say who I relieved. I got the course from the wheelsman. While I was at the wheel before the collision, an officer came aft to the bin-
125 nacle. I remember one was there once. Don't remember that any officer was there more than once. He gave me no order. I can't say how long he staid there. He spoke to me. I can't say whether I saw any other light than this one; it was enough for me to look out for my course. I don't remember seeing a vessel pass to leeward just before the collision. I don't know whether some one showed a light to vessel to leeward. I didn't see a torch-light held out there. I would not see a torch-light if it was held to lee of the main sail. I don't know whether I saw our 1st mate on deck before the collision. I stand in what is called the cockpit to steer. I made this light about ½ way between foremast and forerigging about a point, may be more or less; a little inside of the cathead. I could not say rightly whether it was inside or outside of the cathead. Had nothing to do with lights. Don't know whether I saw it more than once. I can't say whether it was a torch-light or bright light, or what. I can't say whether I saw it more than once. I was steadying my vessel by my compass. No stars to steady her by. Can't tell whether it was a light or not I saw. I saw the torch-light shown on our vessel. I saw the light I made after our torch-light was shown. I can't say whether capt'n gave me the order to put the helm hard up at the time the torch-light was shown or not; don't know. I can't tell whether he gave me the order to put the helm hard up be-

fore the torch-light was shown or not. When he did give me the order
126 I put the helm hard up. When I got the helm hard up and looked up I did not see the torch-light burning. It was not after I got the wheel hard up that I saw the torch-light. I can't say when it was. I saw a light on the deck of a vessel; it did not shine on the deck where I was standing. I saw it forward. Could not see where torch-light was; the foresail was dropped. The order "hard up" was the only order I got before the collision. Don't know whether or not that order was given before the torch-light was shown; it is a good spell to remember. Don't know whether 2 torch-lights were shown on our vessel or not. Can't say whether I swore to the protest or not. If I did swear to it I suppose I would not have sworn to it unless it had been a true statement. Did not swear in that protest that I made that light 3 points on our port bow. I did not pay particular attention to the wind, it was not my business to, but I could see by the compass. The wind might have been a point or 2 different and I not noticed it. I could tell if it was abaft the beam or ahead or astern. The wind had been baffling all the afternoon. If the vessel had been by the wind, I could have told better how the wind was. When I got the order "hard up" I had more than time to put it before the collision; it might have been a minute or so, can't say; it might have been half a minute, can't say. I am sure it was up and had been some little time before the collision. When I got it up and held it so with one hand, I don't think that was the time I looked forward and saw the torch-light
127 on the deck. After the collision, I can't say how long it was before we were braced up. Can't say how long she lay aback; think it was 3 or 4 minutes, but can't say but it was 20 minutes. I didn't look. As the wind was then my vessel would keep away the quickest. Capt'n gave me order hard up, may be a minute or ½ a minute before the collision; I can't say. After the collision we steered S. by W. ½ W. We then came around on the other tack. She then broke off to S., S. by E., or S. ½ E. We then stood into the land and steered no course, full and by, that would be NW. ½ W. or so, I don't remember. We then came to anchor. We did not go on because we could not work her. When I say broke off, I mean the wind changed and got a little more ahead so that we could only head S. by E. or S. by E. ½ E.; that was caused because we had no head sails.

Edward White sworn:

I live in Detroit. I sail for a business. Have been sailing about 3 years. I was on Newsboy at the time of the collision. I was boy. I am 19 this month. I was in 2d mate's watch. Went on watch at 6 o'clock, after supper. When I came on watch I went on the gallant forecastle, forward of forerigging. I was lookout. No one else there with me. Before the collision I saw the light of a vessel that passed to leeward. I saw her
128 light, I can't say how long before she passed to leeward. I reported the light to capt'n and officer to watch. I said I saw a light, sir. I afterwards saw the light of the vessel we came in collision with. I saw it first on the port side; it was a red light, it was on port side. I can't say how far. I had no chance to take ranges, because I had no compass and was not where it was. When I saw that light I stood where I was. The capt'n asked me if I saw that light. I told him I thought I did, but was not sure. I thought I had seen it before the capt'n asked me. I had been looking at it before the capt'n asked me if I saw it. Before capt'n asked me I had been doing nothing but lookout. I could see all around forward. Saw the light on port bow; I can't say how long before the collision; think it was from ¼ to ½ an hour. When capt'n asked me if I saw a light he stood there and observed the motions of the other vessel. He then ordered the torch-light to be lit. Can't say who got the torch-light. Can't say how long

it took to get torch-light. They showed the torch-light. Can't say who showed it. They showed it from ½ a minute to a minute, I think. I could not see the other light while the torch-light was burning. I was standing on the gallant forecastle. When the torch-light was put out don't remember anything in particular that happened. When the torch-light was put out the 1st thing I remember the capt'n said or did was to tell the man at the wheel to put his helm up. Can't say how long after the torch-light
129 went out before capt'n gave the order. When capt'n gave the order he put helm up. He sung out to the other vessel to put the helm down. I heard no more than put the wheel down and luff. When capt'n gave orders to put the wheel up I could see the other vessel. At that time the other vessel seemed as if she was going across us. When capt'n gave the order I moved aft with the rest of the men out of the way. I went aft as soon as capt'n told us to. The boys came out of the forecastle. Don't know who it was told them to. I went aft with them. When the collision happened I stood pretty close to the main rigging, the forward side of it. Our sails did not jibe over before the collision.

Cross-ex.

At time of collision I had been sailing part of 2 seasons. I was about 17. I was getting $20 a month. Don't recollect whether it was warm. I was walking up and down the deck. The rest of our watch was walking between forerigging and forecastle on farther aft. The light I made to leeward was a red light, I think, but don't remember in particular. I don't recollect whether either officer came forward. We showed a torch-light to her. I showed it. One of the officers ordered me to show it; I don't know which. When the torch-light is burning we can't see anything else; it blinds the eyes. After I put that torch-light out can't say how long it was before capt'n came forward. I think he came alone. 2d mate came up af-
130 terwards. I heard them talking, but could not tell what they said. I could only hear them talking. While they were up there I was looking at the light. I turned once in a while and walked the deck. Made no other light before the collision that I recollect of. I can't say how long they stood there watching the light. Did not notice any other light on it but the red light. When capt'n asked me if I made the light I was standing on the port side. Could not be so particular as to say I was standing close to the rail. Made it on port bow. [Witness locates the vessels as he thinks they were when he first made the light, and says he meant to locate them 2½ or 3 points on the port bow.] Can't say how many lengths of the vessel off. Might have been a minute's difference between the time I made the light and the time he showed the torch-light. Can't say who showed the torch-light. There was not more than one torch-light showed to this vessel that I know of. Don't know who put it out. I was then on the gallant forecastle. I can't swear whether the capt'n gave the order hard up before or after the torch-light was put out. When I went aft I think I went pretty fast. I think I went ahead of the capt'n. I just got by the mainmast when the collision occurred.

James Smith sworn:

I live in Buffalo. I am a ship-caulker and sailor. I have sailed since 1854 on and off. I never sailed any season clear through. I think I
131 have sailed 6 or 7 seasons since 1854. Sailed on the western lakes. Have been an officer on the barque White Cloud. I was 2d mate a month or so. Was on the Newsboy at the time of the collision. I was in capt'n's watch. I went on at 6 o'clock. Don't know the course of the vessel then after coming on watch. I noticed a vessel passed us to leeward.

After the vessel passed to leeward I am not certain I saw a light on any other vessel but think I did. Saw the light on the White Cloud before the collision. When I first saw it I was standing be-aft the gallant forecastle on main deck. When I first saw the White Cloud's light I think it was a little over 10 minutes before collision. When I first saw it I think it was about 2 points or a little more on the weather bow, took no ranges then nor looked at the compass. When I first saw White Cloud's light first I put my foot up on weather rail and watched the light. I stood there until I was ordered to get the torch-light. When I was ordered to get the torch-light the vessel seemed to be coming right down on us; it seemed to me as though she was working off all the time to eastward. We opened the light a little, I think, just before I was ordered to get the torch-light. The vessel appeared to be coming right square for us. I got the torch-light; it took me about ½ a minute to get it and deliver it lit. When I got it lit I gave it to 2d mate; he held it over the bow and flourished it around there some; then it was
132 put out. Immediately after it was out the capt'n sung out hard up to the man at our wheel and sung out to the other vessel to keep his luff. He sung out several times. I think I heard them sing out hard up on the other vessel but am not certain. I was then standing be-aft the forerigging. It was after the order "hard up" on our vessel. I was leaning against the gallant forecastle when capt'n gave the order hard up. After torch-light was put out I could see the other vessel. She seemed to be coming right for us. I think she had the wind over her quarter. From the time capt'n gave order to our man hard up until the collision I don't think it was over a ½ a minute. When the vessel struck I was be-aft the forerigging. Our sails did not jibe over before we struck.

Cross-ex.

Capt'n drew my attention to the light. I was forward then. Capt'n and 2d mate were amidships. I heard them talk about the light. I heard one of them ask the other if he saw that light. Capt'n and 2d mate went forward. Capt'n went first. After capt'n came forward I was about 12 feet from him. I remained there until I went for the torch-light. Did not hear the lookout report the light. When I made it I think it was a little over two points off port bow. It grew less than two points as I watched it. When I went to get the torch-light I thought there was
133 danger of a collision. I trimmed up pretty fast. At that time capt'n gave no order to wheelsman. Capt'n told me to get the torch-light. Capt'n said "get the torch-light." He was cool. He said nothing else then. Capt'n did not remark, that I heard, "she is all right, show her a torch-light." Did not hear him say we are going well clear of her. If he had said it I would have heard it. I swore to some of the protest. There were some things there I did not know anything about. I mean the courses and that like.

Question. Did you not swear in that protest that the capt'n remarked she is all right, and we are going well clear of each other, and told the 2d mate to show the torch-light?

Answer. I could not say. Capt'n and 2d mate stood there watching the light 5 or 6 minutes; may be more. I thought I saw another light somewhere along there, but am not certain of it. She was pretty close when I was ordered to get the torch-light. She was probably 5 or 6 lengths of herself off. I thought she was swinging all the time. Capt'n and 2d mate stood there while it was burning. When capt'n ordered the helm hard up the vessel was 2 or 3 lengths off, I should think; torch-light burned; can't say how long; it was a short time. When I went aft I think I went ahead of the capt'n. I got off near the foremast. Then I stopped and heard the order on the other

vessel to hard up. Didn't start aft as soon as torch-light was put out. I put the light away. I think capt'n walked past me just as the vessels came together. I am certain the order was given on our vessel hard up after the torch-light was put out. After the torch-light was put out we were
134 heading, not exactly across her bows, but she was a little to northward of us. I think we were heading on our course, and she was a little to windward of us when the torch-light was put out.

Question. At the time the torch-light was put out were you heading across the bows of the White Cloud, under her stern, or right for her?

Answer. I think we were going to the leeward of her, and she was bearing down on to us. I think we were heading across her bows. The only way I knew we were on our course I heard the remarks made. When the capt'n hailed the other vessel to luff she was 3 or 4 lengths off; may be more; can't tell for certain. He ordered our helm up, and then told them to keep their luff.

Redirect.

Question. If at the time capt'n gave the order to that vessel to luff, if she had luffed would she have gone clear?

Answer. Yes, sir.

Recross.

She was 3 or 4 lengths off when that order was given; that is, 1,000 or 1,200 feet off. We were going about nine knots; the other vessel pretty smart.

George W. Hale sworn:

I live in Chicago. I am a sailor, and have been since 1841, on the western lakes and ocean. Have been a master on the western lakes 5 years.
135 On the evening of the 12th of Nov'r I was near the vicinity of Twin River and Manitowoc. I was master of the Grey Eagle. We were in company with the White Cloud all day. When we were off Kewanee she was 4 or 5 miles to leeward. We steered S. by W. ½ W.; headed along the land. We kept on that course until about ½ past 9 in the evening. It fell dark about 6 or a little after. At dark the White Cloud was right astern of us, and the wind was to the westward. I think it varied from W. to W. by S., or ½ S., and that was as far south as it got. From that time on it kept there until 9 o'clock. The White Cloud was a mile and a ½ astern, more or less. I passed the Newsboy to leeward of her. She showed me a torch-light. I recognized her. I think he must have been steering N. by E. ½ E., or N.NE. When we passed the Newsboy the White Cloud was dead astern of us. When we passed the Newsboy the White Cloud had been astern of us since about 4 o'clock. She kept astern from that time. After we passed the Newsboy I noticed the White Cloud was dropping to leeward of my wake, keeping off more than I was. I observed her doing so a minute or so. I think it was full a minute, for I stepped to the binnacle, and then stepped back and saw her lights veering off. At the time I looked at the binnacle I was heading S. by W. ½ W. I watched the White Cloud's light, as we generally do when our vessel is faster than the other and one ahead. Did not see the collision. I heard it. I think we were off not over a mile, if I was that. Before the moment of collision I observed the light of
136 the White Cloud keeping away. It might have been a minute, or it might have been less. I noticed it when the Newsboy was a little abaft my beam. I spoke to the mate, and said I guess he is keeping away more than we are. I think I was 5 or 6 miles from land. I observed the wind particularly all the time. When we were abreast the Newsboy I think

we were 500 feet off. About the time of collision I saw the Newsboy show 2 torch-lights. I observed the White Cloud keeping away before the torch-lights were shown. I think Manitowoc light was forward of the beam at time of collision, but took no observation on it.

Cross-ex.

I saw White Cloud keeping away when the Newsboy was a little abaft our beam, and she kept away from that time until the time of collision. She must have changed to the eastward. She got 1 point or 1½ points on my lee quarter. She was about 1 mile and ½ astern of me. We carry 3 compasses—2 in the binnacle, and 1 in the cabin. I consulted the one in the binnacle. It took the White Cloud a minute or little over to get a point and a ½ on our lee-quarter. The wind had been baffling, but not so but what I could make my S. by W. course. There were 5 vessels in my company just before dark. After dark I could only make out three of their lights. I made one right astern, 1 on lee quarter, and one on the weather quarter. I
137 think 1 point on weather quarter; ½ to ¾ of a point on lee quarter; good lights. Did not notice during the afternoon that these vessels took the wind a point or so different from us. When we made the Newsboy's light it was a point on our starboard bow. Did not change my course in passing her. The Rival was one of these other vessels. I think she was astern of the White Cloud. I had been on deck from 3 until 7 o'clock. Did not go to supper; watched the lights astern all the time. The man at the wheel navigated my vessel. The 1st mate was navigating my vessel in my place. It was his watch from 6 to 8. I was within a mile of Kewanee when I passed it, and within a mile and ½ or two miles of Twin River Point when passing there. Steered the same course all the afternoon. Starting a mile of Kewanee, a course S. by W. ½ W. will not run me into the shore if the vessel is light. The Newsboy crossed my wake ¼ to ½ a mile astern of me; not over that.

Question. If you are steering a course full and by with another vessel dead astern, and the wind comes so that you break off ½ a point or a point, that would bring the vessel astern of you to leeward of your wake, would it not?

Answer. It would. I stood on the starboard tack from 3 to ½ past 9. From 6 to 8 the mate had charge of the deck; stood into land about ½ past 9, and stood about W. NW. Then the wind was baffling and fell away and got light. After we went about the wind was from S. to SW. and
138 W. SW. I think Capt. Stanford 1st spoke to me about the wind that night, last April, in Buffalo; he asked me how had I the wind. I was in Milwaukee the next evening at 7. On the 11th the wind was to the southward and baffling, but can't tell within 2 points how it was. My vessel was a fore-and-aft schooner. The White Cloud was nearer than the Rivals to me. My vessel will not run within less than 6 points of the wind. The Rivals could lay with 4½ or 5 points of the wind.

Nelson H. Bleam sworn:

I reside in Milwaukee. I am a sailor, and have been capt'n on the western lakes 12 years. I remember the night of the collision. At 6 o'clock we were about off Twin River Point. I was in the schooner W. J. Whaling. I was master on her. She is a fore-and-aft schooner. I was on a course from S. by W. to S. by W. ½ W. The wind was baffling. At 6 the wind was W. by S. and W. At 6 we had been on that course since ½ past 3. After 6 we kept on that course until between 9 and 10 o'clock. Got supper between 6 and 7. From 5 to 8 the wind would average from W. to W. by S. I watched it myself till ½ 7. I observed the course my vessel was making.

Cross-ex.

My vessel was in ballast, probably had a little over 100 ton. The San Jacinto, White Cloud, Rivals, and Grey Eagle were in my company.
139 I was at 7 o'clock from ½ a mile to a mile astern of the White Cloud. She was on my lee bow. We were somewhat to windward of her. I do not remember of seeing her light. I don't think we were far enough ahead to see her light. The Rivals was to windward of me and ahead. I did not notice her after leaving Kewanee; that was between 3 and 4 o'clock. The wind that afternoon varied from S. to SW. before we went in stays. My mate reported a change of wind about 12; but said it had changed between 9 and 10. On my vessel there is a poop-deck. There are lights in front and in the rear of the cabin. No sky-lights. I saw lights flash, which I took to be torch-light; it lasted not over ¼ of a minute. The mate called my attention to it. I was in the cabin, and came on deck and saw them. I was not on deck at the time. I had been in the cabin from 15 minutes to ½ an hour. It was the mate's watch. I don't know anything about the wind while I was in the cabin, except I gave orders to have the vessel kept by the wind. Afterwards I went aft and saw how it was.

Capt'n Stanford recalled, desiring to make an explanation in regard to signing the protest, the court permit him to do so, and he says that a part of the crew signed the protest; at first they told me that was all that was necessary. Subsequently I received a letter from Mr. Bentley, desiring me to have all swear to it; then I took the rest in. The notary was in the ware-
140 house close by where we unloaded, and as I had to walk no distance I did not remember this on my former examination.

Rebutting evidence.

Capt. George Elsey:

I gave the order to wheelsman hard up your helm but once. On our deck in front of the cabin there was a provision box; I think it hides the windows.

(A model is here shown to the court, marked A.)

When the White Cloud is on the wind we carry the helm about midships. When standing on a wind, as the vessel was that night, she would be keeled over a little. The port side of the provision box is from 9 to 10 feet from rail, I should think. The windows are about 18 inches square.

The above and foregoing is the testimony of the witnesses of behalf of respondent, taken down by the undersigned on the trial of the case, by order of the district judge.

J. ELISHA WINDER,
U. S. Comm'r for the East. Dist. of Mich.

141 (Here follows Schedule No. 1, referred to in the testimony of Capt. Edward Stanford, folio 148.)

142 Eastern district of Michigan, in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY.

Geo. W. Bissell:

I am aged 30 years and upwards. Have lived in Detroit about twenty years. Have owned and run vessels on the lakes for 10 years. In 1862 I was running vessels in the grain trade from Chicago to eastern ports. I know the schooner White Cloud. About 15,000 bushels is her capacity. In November, about the 14th or 15th, 1862, I knew what freights were from Chicago to Buffalo. On November 15th, 1862, the rates at which vessels were chartered for wheat per bushel from Chicago to Buffalo was 16½ cents.

I chartered one of my vessels at that rate per day. The expenses of the Ravenna, which is about 5,000 bushels in capacity larger than the White Cloud, and I understand carries one man more, is about $32 per day for wages and living of crew. One man less would reduce the expenses about $3 or $3¼ per day. I think the White Cloud would in worth nett per
143 day about the sum of $75. That includes the time of a return trip to Chicago. In that I include expenses of tonnage, $200.
and triming, $84. Wages and board, $29 per day. On freights to Oswego: The freight to Oswego would be about seven (7) cents a bushel greater, or 23½ cents. For a vessel to go from Chicago to Oswego would take 10 days, and to change cargo 1 or 2 days longer. A vessel loaded could go from Chicago to Oswego, leaving Chicago on November 15th, before closing of navigation. A round trip would take about 30 days. But leaving on the 15th she could not make very well a round trip back to Chicago that season.

Cross-examination.

I think there were no return freights at that time worth anything; they some times paid for ballast.

G. W. BISSELL.

Sworn and subscribed before me this 29th day of April, A. D. 1864.
J. ELISHA WINDER,
U. S. Commissioner, East. Dist. of Michigan.

Hugh Coyne:

I am the owner of the White Cloud. I know that she was repaired
144 in Banta's yard, in Chicago, after the collision. No repairs made except such as were caused by the collision. There was a survey called and made on her in Chicago that cost, and I paid therefor, $20. I paid Mr. Welles for repairs to staysail $130. The staysail was injured by collision. I paid Donaldson's bill for blacksmith's work caused by the collision $9 24. I kept Capt. Elsey there to look after the vessel while being repaired, 29 days. His wages were $100 per mo. I paid board bill for him 21 dollars for same, or 21 days of same. It was necessary to have some one there to watch our vessel and her repairs at this time. It was 4 or 5 days before she could get into the dry-dock to commence her repairs. There was no dock vacant. It would take the White Cloud to make a trip to Oswego 10 or 12 days. She could make that trip to Oswego but not the trip back before close of navigation. At Chicago I was told by Mr. Goodenough that freights to Oswego were 23½ and to Ogdensburgh 25 c'ts per bushel; that vessels could charter at those rates at that time. That was while the White Cloud was there. To go from Chicago to Ogdensburgh would take 12 to 14 days.

145 *Cross-examination.*

I was in Chicago twice while repairs were being made; about 10 days in all. The crew were discharged except capt. and cook.

H. COYNE.

Subscribed and sworn before me this 29th day of April, A. D. 1864.
J. ELISHA WINDER,
U. S. Comm'r, East. Dist. of Mich.

We hereby stipulate that the above testimony may be read on the reference in this case.

JNO. S. NEWBERRY, *Proctor for Libellant.*
DOUGLAS & ANDREWS,
Proctors for Respondents.

District court of the United States for the district of Michigan, in admiralty.

In the matter of the libel and claim of Hugh Coyne, libellant, *vs.* the barque Newsboy, her boats, &c.

To the Hon. Ross Wilkins, judge of the court aforesaid:

In pursuance of a decretal order, made in the above-entitled cause, on the fifth day of April, A. D. 1864, by which, among other things, it was referred to the undersigned, commissioner of the court aforesaid, to examine into
146 the claim of the said libellant on file in this cause, to take such testimony as might be offered in relation thereto by either of the parties to this suit, and to report to the court aforesaid the amount proved to be due to the said libellant upon the libel on file in the cause aforesaid with all convenient speed, I, William D. Wilkins, commissioner as aforesaid, to whom the matter was referred as aforesaid, do report that I have been attended at my office, in the United States district court-house, in the city of Detroit, Michigan, on the fourth day of May, A. D. 1864, by John S. Newberry, esq., libellant's proctor, and by George Andrews, esq'r., one of the proctors for the claimants, and have taken and examined the testimony offered in support of libellant's claims, and do find therefrom that there is due from the said barque Newsboy, her owners or claimants, to the said libellant, Hugh Coyne, owner of the schooner White Cloud, for damages sustained by said
147 schooner White Cloud on occasion of her collision with the barque Newsboy, on November 12, 1862, the sum of five thousand one hundred and thirty-four 55-100 dollars, ($5,134 55,) and interest thereon from Nov. 12th, 1862, to the date of entry of final decree in this cause, making in all the sum of fifty-one hundred and thirty-four 55-100 dollars ($5,134 55) due said libellants from said barque Newsboy, her owners or claimants, on this day, together with *with* interest as above to be added.

The above report is made up from the following details:

Damages to hull of vessel repaired at Chicago	$2, 853 65
Paid for survey at Chicago, $20, and repairs to staysail and blacksmithing, $139 24	159 24
Wages and board of capt. while vessel was repairing, 29 days, at $96 66 and $25	121 66
Demurrage for detention of vessel at Chicago while undergoing repairs caused by collision, 25 days, at $80 per day.....	2, 000 00
Total as above stated.....	5, 134 55

Which claim appears to be a valid and existing admiralty lien upon said barque Newsboy, her boats, tackle, apparel and furniture. All of which is respectfully submitted.

Dated May 4, 1864.

WM. D. WILKINS,
Comm'r, U. S. District Court, Detroit, Mich.

148 *Testimony taken on reference on behalf of respondents.*

In admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY.

Orville Wilcox, being duly sworn, says: I am 30 and upwards. My business is that of a ship-chandler. Have run vessels for 13 years, but not for the last 8 years. Our firm owned vessels for 7 years. The firm have been engaged in running vessels from Chicago to eastern ports. I know the ca-

pacity of the White Cloud; it is about 14,500 bu. of grain. The ordinary length of time for a trip from Chicago to Buffalo and back is about 25 to 28 days. She will make a quicker trip than lay vessels. It depends some upon how they are detained during the season in getting to elevators.

Question. Supposing freights to Buff. were 16½ cents per bu. and the W. Cloud could carry 14,500 bus. of wheat, how much would the W. Cloud be worth per day in November, 1862?

149 Answer. She would be worth about $80 a day. I estimate by gross amount of freight and deducting expenses. I am not very well posted as to the wages of men, but take that from others. I estimate wages at $2½ per day for season; capt., $100 per month; mate, $60; and 2d mate, $50. I think these were about the amounts at that time. I also estimate for towing, elevating, tonnage, &c. Towing at Chicago, $25; at Buffalo, $20, although the sum was $100, but think it rather small; should be about $120. Also board of men. I estimate entire expenses of such a trip at $782 for 25 days. At that time I think not much return cargoes that would pay. Our vessels took some up. From my knowledge of the business I think the general impression was that up freight would not pay. I mean from Buffalo. From Oswego I think there were good freights.

Cross-examination.

From Chicago to Oswego it would take a loaded vessel about 12 days.

Question. Supposing freights to Oswego were 21 c'ts on Nov. 15th, 1862, and the W. Cloud could be chartered at that rate for a trip to Oswego, what would she be worth per day?

150 Answer. It would be as near as I could figure it for 18 days she would be worth $125 per day. By the board of lake underwriters the season of navigation would close on the 30th of November, at noon.

Re-examination.

In my answer to Mr. Newberry, I took the gross receipts and deducted expenses, and divided by 18, the No. of days. Vessels are often chartered by a trip up or a trip down.

O. WILCOX.

Subscribed and sworn before me this 30th day of April, A. D. 1864.

J. ELISHA WINDER,
U. S. Comm'r, East. Dist. of Michigan.

E. G. Merrick:

My residence is in Detroit. (It is admitted he is an expert, by counsel.) In Nov., 1862, I was engaged in running vessels, and I know the rates of freight to Oswego from Chicago. They were 21 cts., and to Buffalo 16 cts., I think. I know the W. Cloud.

Question. If the W. Cloud could carry 14,500 bu. of wheat, what would she be worth per day for carrying freight to Buffalo and Oswego?

151 Answer. I made an estimate on the round trip. I consider 25 days a good average trip to Buff., and to Oswego 35 to 38 days a good average trip, and her nett earnings would be between $75 and $80; about $80. I estimate from gross receipts, and deduct expenses, wages, board, towing, elevating, &c. Gross expenses for 25 days at that season would be from $750 to $775. Towing I estimate at $155; wages of capt., $100 per month; mate, $60; 2d mate, $45; men's wages at 2½ per day. On a trip to Oswego, the tolls would be $120, and the towing about $50; toll on the vessel about $10, with board and wages for the additional time. Board of 9 men I estimate at $4 50 per day.

Cross-examination.

I think it would take a vessel to go from Chicago to Oswego and unload, would be about 16 or 17 days.

Question. On the rates of freight as you testify, what would the W. Cloud be worth per day with grain to Oswego, starting Nov. 15th from Chicago?

Answer. Taking 18 days for the trip, she would be worth $134 per day. I arrive at this by taking gross receipts, and deducting expenses,
152 and also expenses of loading and unloading. Not estimating for return trips.

E. G. MERRICK.

Subscribed and sworn to before me this 30th of April, 1864.

J. ELISHA WINDER,
U. S. Comm'r, East. Dist. of Michigan.

It is hereby stipulated that above deposition may be read in evidence in this cause.

DOUGLASS & ANDREWS, *Proctor for Claimants.*
NEWBERRY & POND, *for Libellants.*

In the district court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY.

Exception of libellant to report of commissioner.

The libellant hereby excepts to the report of the commissioner, filed in this cause, for the following reasons, that is to say:

First. Because the proof in the cause shows that said schooner White Cloud was delayed in making the repairs rendered necessary by said
153 collision for 29 days, and that the value of the services of said White Cloud was, and she could have been chartered for, the sum of from $125 to $150 nett per day during said time, or for said 29 days from $3,625 to $4,350. One of which or the medium of said sums should have been allowed by said commissioner, whereas said clerk only allowed for 25 days, at the rate of $80 per day, in all $2,000. Whereof libellant prays that said report may be corrected in that regard.

NEWBERRY & POND, *Proctor for Libellants.*

District court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE, libellant,
vs.
THE BARQUE NEWSBOY *et al.*, respondents.

Exceptions taken by the said respondents to the report of William D. Wilkins, clerk of said court, to whom it was referred to examine into the claims of the said libellants in this cause, and to report thereon to the said court.

154 1st. For that the said clerk hath reported that there is due from the said barque Newsboy, her owners or claimants, to the libellant, for damages sustained by the schooner White Cloud, on occasion of the collision with the barque Newsboy, on November 12, 1862, the sum of $5,134 55, and interest thereon from Nov. 12, 1862, to the date of entry of the final decree in this cause; whereas the said clerk should have certified upon the testimony in this cause that a much less sum, to wit, a sum not exceeding $3,000 was due as aforesaid.

2d. For that the said clerk in estimating said damages allowed in favor of said libellants the entire expense of the repairs made on said schooner White Cloud, without any deduction for the increased value of the vessel by reason of the new materials used; whereas said clerk ought to have charged said respondents with an amount not exceeding two thirds of the expense of said repairs.

3d. For that said clerk in his said report has allowed said libellant and charged said respondents for the wages and board of the captain of the said White Cloud for 29 days, while said repairs were being made; whereas the same were not a necessary part of the expense of said repairs.

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4th. For that said clerk has in said report allowed said libellant and charged said respondents with the sum of $2,000 for demurrage for the period of 25 days, while said White Cloud was undergoing repairs, being at the rate of $80 per day; whereas said allowance for demurrage should have been for a period not exceeding fifteen days, and at a rate not exceeding $75 per day.

In all which particulars the report of said clerk is, as the respondents are advised, erroneous, and they therefore appeal therefrom to the judgment of the honorable court.

DOUGLASS & ANDREWS, *Proctors for Respondents.*

156 *Decree sustaining libel, and order of reference.*

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in Detroit, on Tuesday, the fifth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ross Wilkins, district judge.

Cross-libels for collision.

In the matter of the libels of Hugh Coyne, owner of the schooner White Cloud, *vs.* the barque Newsboy, and James R. Bentley, Jesse Hoyt, and Charles Clark, owners barque Newsboy, *vs.* the schooner White Cloud, in admiralty.

These causes having been heretofore fully argued by counsel and submitted upon the proofs and pleadings therein, and mature deliberation having been had thereupon, it is now by the court here ordered, adjudged, and decreed that the libel of said Hugh Coyne against the barque Newsboy be sustained, and a decree entered thereupon for damages, and that the libel of said Bentley, Hoyt, and Clark be dismissed with costs to said Coyne against said barque Newsboy, and the claimant of said sch'r White Cloud, against said Bentley, Hoyt and Clark. And it is further ordered that it be referred to Wm. D. Wilkins, a commissioner of this court to ascertain the damages sustained by libellant Coyne on occasion of the collision set forth in his libel, to take such testimony as may be offered in relation thereto by either party, and to report the amount proved to this court with all convenient speed.

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Final decree.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, in said district, on Thursday, the twelfth day of May, in the year of our Lord one thousand eight hundred and sixty-four

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In the matter of the libel and claims of Hugh Coyne *vs.* the barque Newsboy and Stanford, her master, and James R. Bentley, Jesse Hoyt, and Charles Clark *vs.* the schooner White Cloud, in admiralty.

The court having heretofore decreed and pronounced upon the pleadings and proofs in these causes, dismissing the said libel of said Bentley, Hoyt, and Clark against said schooner White Cloud, and sustaining and confirming said libel of said Hugh Coyne against said barque Newsboy, with costs, and an order of reference to Wm. D. Wilkins, a commissioner of this court, to ascertain and report the damages sustained by said Coyne on occasion of the collision of his schooner White Cloud with said barque Newsboy; and said commissioner having filed his report in said cause, showing that said libellant, Hugh Coyne, hath sustained damages by reason of the
159 said collision in the sum of five thousand one hundred and thirty-four 55-100 dollars, ($5,134 55,) and interest thereon from Nov. 12, 1862, the date of collision, to this day, the sum of five hundred and thirty-nine 11-100 dollars, ($539 11,) in all, the sum of five thousand six hundred and seventy-three 66-100 dollars, due said libellant Coyne, ($5,673 66;) and John S. Newberry, esq'r, proctor for said libellant Coyne, and George Andrews, esq'r, proctor for said libellants Bentley, Hoyt, and Clark, having heretofore each filed exceptions against said report on behalf of said libellants, respectively, which now come on to be heard: The court do now overrule said exceptions, and do ratify and confirm said commissioner's report awarding and decreeing to said libellant Hugh Coyne, against said barque Newsboy, and her owners and claimants, the said sum of five thousand six hundred and seventy-three dollars and sixty-six cents, damages reported by said commissioner as aforesaid, for his damages in this
160 cause. And it appearing to the court from the records and files in this cause that the said barque Newsboy, and her boats, &c., was, on the 20th day of May, A. D. 1863, duly bonded by Edward Kauter, of the city of Detroit, in the sum of eleven thousand seven hundred dollars, pursuant to the act of Congress in such case made and provided, and the rule of this court conditioned to abide and answer the *the* decree of this court to be pronounced in this cause, and to pay the award thereof, and consenting that unless he should do so that execution should issue against him therefor: Therefore, on motion of John S. Newbery, esq'r, libellant's proctor, it is now ordered, adjudged, and decreed that the said Edward Kauter, surety aforesaid, do within ten days from this day pay into the registry of this court the said sum of five thousand six hundred and seventy-three dollars and sixty-six cents, damages awarded as above against said barque Newsboy, her boats, &c., to said libellant Hugh Coyne, or that in default thereof execution do issue against him therefor, which said costs, pursuant to the
161 provisions of the act of Congress in such case made and provided, are now here taxed at the sums following, and are made a part of this decree, to wit: Libellant's disbursements for witnesses and comm's'r's fees in court, on depositions, and on reference as stated in items in memorandum of taxation attached to comm's'r's report, one hundred and ninety-eight 85-100 dollars, ($198 85;) libellant's proctor for docket fee in final hearing, attending on taking 9 depositions on trial, and 7 depositions under reference, and disbursements for protest and stamp, sixty-two 50-100 dollars, ($62 50;) marshal's fees on service of process in this cause five dollars, ($5 00;) clerk's fees in this cause, and commissioner's fees on the order of reference, ninety-seven 35-100 dollars, ($97 35;) making in all for the taxed costs of this cause as against said barque Newsboy, the sum of three hundred and sixty-three dollars and seventy cents, ($363 70.) And hereupon Messrs. Douglas and Andrews, proctors for said libellants Bentley, Hoyt, and Clark,

give notice in open court that they will appeal from the foregoing
162 decree to the next circuit court of the United States for the seventh circuit and eastern district of Michigan, and are granted ten days to perfect said appeal, and the amount of said libellants on said appeal is now fixed by the court at five hundred dollars.

The district court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE, libellant,
vs.
THE BARQUE NEWSBOY AND EDWARD STANFORD, HER MASTER, James R. Bentley, Jesse Hoyt, and Charles Clark, claimants.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, libellants,
vs.
THE SCHOONER WHITE CLOUD AND GEORGE ELSEY, HER master, Hugh Coyne, claimants.

To the honorable the circuit court for the eastern district of Michigan:

163 The appeal of James R. Bentley, Jesse Hoyt, and Charles Clark, the above-named appellants, respectfully sheweth that on or about the 25th day of May, A. D. 1863, the above-named libellant, Hugh Coyne, exhibited his libel in the district court for the eastern district of Michigan against the above-named barque Newsboy and Edward Stanford, her master, claiming damages against said barque and her captain for injuries alleged to have been sustained by a certain schooner called the White Cloud, whereof said libellant was alleged to be the owner, in consequence of a collision between said schooner White Cloud and said barque Newsboy, praying, amongst other things, that said barque and her said captain might be condemned to pay the said demand and the costs. Process issued out of said court was served upon said barque and the said Edward Stanford; and thereupon the said Edward Stanford, together with the above-named James R. Bentley, Jesse Hoyt, and Charles Clark, owners of said barque Newsboy,
did on or about the 19th day of August, 1863, file their joint answers
164 to said libel, praying that said libel might be dismissed with their costs in that behalf, as by the said libel and the said answer will appear.

On or about the 19th day of October, 1863, the appellants, James R. Bentley, Jesse Hoyt, and Charles Clark, filed their cross-libel in said cause against the said schooner White Cloud and George Elsey, her master, claiming damages for injuries sustained by the said barque Newsboy by the collision above mentioned, and praying, amongst other things, that said schooner and her said captain might be condemned to pay the said damages and costs. Process out of said court was served upon said schooner; and thereupon the said Hugh Coyne, claimant of said sch'r, did, on or about the 2d day of February, 1864, file his answer to said cross-libel, praying that said cross-libel might be dismissed with costs, as by the said libels and the said answer will appear.

Said cause and said cross-cause came on to be heard together before the Hon. Ross Wilkins, judge of said district court, on or about the 9th
165 day of February, 1864, upon the pleadings and proofs therein. And the said judge having advised therein, on the 5th day of April, 1864, made a decree in said causes, whereby it was decreed that the libel of said Hugh Coyne against the barque Newsboy be sustained and a decree entered thereupon for damages, and that the libel of these appellants, Bentley, Hoyt,

and Clark, be dismissed with costs, and that it be referred to William D. Wilkins, a comm'r of said court, to ascertain the damages sustained by said libellant Coyne, on occasion of the collision set forth in his libel, to take such testimony as might be offered in relation thereto by either party, and to report the amount proved to said district court, as by reference to said decree will appear. Under which decree a reference was had to said comm'r, who reported that there was due from the said barque Newsboy, her owners or claimants, to the said libellant, Hugh Coyne, for damages sustained on account of the collision aforesaid, the sum of five thousand one hun-
166 dred and thirty-four dollars and 55 cents, with interest thereon, from the 12th day of November, 1862, to the date of entry of final decree in said cause; which report was on the 12th of May, 1864, confirmed by said court by the final decree thereof.

And the said appellants are advised and insist that the said decree is erroneous in each and all its parts and particulars, and in the fact that the said Hugh Coyne was not entitled to any of the relief decreed to him by said decree, and in the fact that said appellants were and are entitled to all the relief prayed for in their said libel. And these appellants, for these and other reasons, appeal to the circuit court of the United States for the eastern district of Michigan, and to the next term thereof, from the whole of said decree, and from each and every part thereof, and more particularly from that part thereof dismissing the libel of the said appellants with costs, and from each part thereof which adjudges or decrees that the said libel of the said Hugh Coyne be sustained or that he should recover any sum or damages, and from each and all parts of said decree by which it is adjudged
167 or decreed that the said appellants or their surety or sureties, stipulator or stipulators, bondsman or bondsmen, or proctors shall pay any sum or sums or costs, and from each and all parts of said decree which decrees or adjudges that there was any negligence, unskilfulness, or fault upon the part of the Newsboy or any of her officers or crew, or that there was not negligence, unskilfulness, or fault upon the part of the White Cloud, her officers or crew.

It is intended upon and in such appeal to make new allegations and proofs, but not to amend any pleading or make any new allegation therein,) and to allege and prove that each and every allegation in the libel or in the answer of these appellants already filed in said district court is true, and that each and every allegation in the libel or answer of the said Hugh Coyne is not true, and that the said Hugh Coyne sustained much less damages in consequence of the collision between the said vessels than that decreed to him, and that they intend upon their libel and answer, already filed in said district court, to pray for relief upon and in said appeal; that is to say, that the prayer of the libel of the said appellant be granted and they have
168 decree accordingly; and that the prayer of the libel of the said Hugh Coyne be denied, and the said libel of said Hugh Coyne be dismissed with costs to the said appellants, and that decree may be made accordingly, and that said appellants may have such other and further or other or further relief in the said circuit court as upon the pleadings and proofs they may be entitled to.

The said appellants intend to have this cause or causes heard anew in the said circuit court on the pleadings and proofs in the district court and on other proofs to be taken, made, and introduced in the said circuit court; and they pray that the said decree and each and every part thereof may be reversed with costs, and that the said appellants may have such decree or decrees or relief in the said circuit as they hereby pray for, and they expressly pray for such relief as it is above stated they intend to pray for; and that the said appellants may have such relief and decrees against the said Hugh Coyne and against the bondsman or bondsmen, stipulator or stipulators,

surety or sureties, and proctor of the said Hugh Coyne, and each and
169 every of them, and for such damages and costs in said district court and in said circuit court as the said appellants may be entitled to.

DOUGLASS & ANDREWS,
Proctors for Appellants.

GEO. B. HIBBARD, *Advocate.*

170 DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

In admiralty.

On this day of May, in the year of our Lord one thousand eight hundred and sixty-four, before me, a comm'r duly appointed and empowered to take acknowledgments of bail, affidavits, and depositions, &c., within the district of Michigan, at Detroit, in said district, in the matter of the libels and claims of Hugh Coyne and the barque Newsboy, James R. Bentley, Jesse Hoyt, Charles Clark, claimants, and James R. Bentley, Jesse Hoyt, and Charles Clark *vs.* the schooner White Cloud, Hugh Coyne claimant, in causes of collision, civil and maratime, moved and prosecuted in the district court of the United States for the eastern district of Michigan; which day appeared personally for the above-named James R. Bentley, Jesse Hoyt, and Charles Clark, Edward Kauter, and the said Edward Kauter submitting himself to the jurisdiction of the aforesaid court, bound himself, his heirs, executors, and administrators, in the sum of five hundred dollars, for the benefit of whomsoever it may concern, that the said James R. Bentley, Jesse
171 Hoyt, and Charles Clark shall prosecute their actions in this behalf and abide by all orders, interlocutory and final, of the aforesaid court, and pay the costs and expenses, if any, which shall be awarded against them by the final decree of the aforesaid court, or of any appellate court, and unless they shall so do he does hereby consent that execution shall issue forth against him, his heirs, executors, and administrators, goods and chattels, wheresoever the same may be found, to the value of the sum above mentioned.

EDWARD KAUTER.

Taken, subscribed, and acknowledged before me this 19th day of May, 1864.

WM. D. WILKINS,
U. S. Comm'r, 7th Circuit and East. Dist. of Mich.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally Edward Kauter, of Detroit, in said district, and made oath that he is worth the sum of five hundred dollars, after payment of his just debts, in real estate subject to execution within said district.

EDWARD KAUTER.

Sworn and subscribed before me this 19th day of May, 1864.

WM. D. WILKINS,
U. S. Com., E. Dist. of Mich.

172 EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby approve of the above bond and of the surety therein named as sufficient.

May 19, 1864. J. H. WINDER, *Clerk.*

In the circuit court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE, libellant and appellee,
vs.
THE BARQUE NEWSBOY, respondent and appellant. } On appeal.

It is hereby moved by the appellee that the appeal in this cause be dismissed, for the following reasons:

First. That there is no proper appeal, in writing, made and filed in the cause.

Second. That there has been no sufficient security given in such sum as the district judge should direct, with securities approved by such
173 judge or the clerk of said court as required by the rules and practice of this court and the said district court in cases of appeal.

Third. Because said appeal has not been perfected as required by the said rules, and is irregular.

Wherefore appellee prays that said appeal may be dismissed with costs.

HUGH COYNE,
By NEWBERRY & POND, *Proctors.*

The circuit court of the United States for the eastern district of Michigan, in admiralty.

Whereas an appeal has been taken to this court from the district court of the United States in the eastern district of Michigan in a certain cause wherein Hugh Coyne was libellant and the barque Newsboy and Edward Stanford, her master, were defendants, James R. Bentley, Jesse Hoyt, and Charles Clark claimants by the said claimants, and said appellants
174 have been ordered to give security in the sum of twelve thousand dollars to answer the final decree in said cause of the said circuit court:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of twelve thousand dollars to answer and perform the final decree of the said circuit court in said cause and to pay all damages and costs that shall be awarded against the respondents in said cause.

EDWARD KAUTER.
GEO. ANDREWS.

Taken and acknowledged this first day of June, 1864.
WM. D. WILKINS, *U. S. Com'r, East. Dist. of Mich'n.*

EASTERN DISTRICT OF MICH'N:

Edward Kauter, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of twelve thousand dollars, over and above all his just debts, in real estate subject to execution in said district.

EDWARD KAUTER.

Sworn and subscribed before me June 1, 1864.
WM. D. WILKINS, *U. S. Comm'r.*

175 EASTERN DISTRICT OF MICHIGAN, *ss:*

George Andrews, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five thousand dollars, over and above all his just debts, in real estate subject to execution in said district.

GEO. ANDREWS.

Sworn to and subscribed before me this first day of June, 1864.
WM. D. WILKINS, *U. S. Comm'r, East. Dist. of Mich.*

I do hereby approve of the within bond and of the sureties therein named as sufficient.

June 1st, 1864.

JNO. WINDER, *Clerk,*
By WM. D. WILKINS, *Dep. Clerk.*

The circuit court of the United States for the eastern district of Michigan, in admiralty.

HUGH COYNE, libellant,
vs.
176 THE BARQUE NEWSBOY AND EDWARD STANFORD, her master, James R. Bentley, Jesse Hoyt, and Charles Clark, claimants and appellants.

To the honorable the circuit court for the eastern district of Michigan:

The appeal of James R. Bentley, Jesse Hoyt, and Charles Clark, the above-named appellants, respectfully sheweth that on or about the 25th day of May, A. D. 1863, the above-named libellant, Hugh Coyne, exhibited his libel in the district court for the eastern district of Michigan against the above-named barque Newsboy and Edward Stanford, her master, claiming damages against said barque and her captain for injuries alleged to have been sustained by a certain schooner called the White Cloud, whereof said libellant was alleged to be the owner, in consequence of a collision between said schooner White Cloud and said barque Newsboy, praying, amongst other things, that said barque and her said captain might be condemned to pay the said demand and the costs. Process issued out of said court was served upon said barque and the said Edward Stanford; and thereupon the
177 said Stanford, together with the above-named James R. Bentley, Jesse Hoyt, and Charles Clark, owners of said barque Newsboy, did, on or about the 19th day of August, 1863, file their joint answers to said libel, praying that said libel might be dismissed with their costs in that behalf, as by the said libel and the said answer will appear.

On or about the 19th day of October, 1863, the appellants, James R. Bentley, Jesse Hoyt, and Charles Clark, filed their cross-libel in said cause against the said schooner White Cloud and Geo. Elsey, her master, claiming damages for injuries sustained by the said barque Newsboy by the collision above mentioned, and praying, amongst other things, that said schooner and her said captain might be condemned to pay the said damages and costs. Process out of said court was served upon said schooner; and thereupon the Hugh Coyne, claimant of said schooner, did, on or about the 2d day of February, 1864, file his answer to said cross-libel, praying that said cross-libel might be dismissed with costs, as by the said libel and the
178 said answer will appear.

Said cause and said cross-cause came on to be heard together, before the Honorable Ross Wilkins, judge of said district court, on or about the 9th day of February, 1864, upon the pleadings and proofs therein, and the said judge having advised therein, on the 5th day of April, 1864, made a decree in said cause, whereby it was decreed that the libel of said Hugh Coyne against the barque Newsboy be sustained, and a decree entered thereupon for damages, and that the libel of these appellants, Bentley, Hoyt, and Clark, be dismissed with costs, and that it be referred to Wm. D. Wilkins, a commissioner of said court, to ascertain the damages sustained by said libellant Coyne on occasion of the collision set forth in his libel, to take such testimony as might be offered in relation thereto by either party, and to report the amount proved to said district court, as by reference to said decree will appear. Under which decree a reference was had to said commissioner, who reported that there was due from the said barque Newsboy, her
179 owner or claimant, to the said libellant, Hugh Coyne, for damages sustained on account of the collision aforesaid, the sum of five thousand one hundred and thirty-four dollars and 55 cents, with interest thereon from the 12th day of November, 1862, to the date of entry of final decree in said

cause; which report was on the 12th day of May, 1864, confirmed by said court by the final decree thereof.

And the said appellants are advised and insist that the said decree is erronious in each and all its parts and particulars, and in the fact that the said Hugh Coyne was not entitled to any of the relief decreed to him by said decree, and in the fact that said appellants were and are entitled to all the relief prayed for in their said libel. And these appellants, for these and other reasons, appeal to the circuit court of the United States for the eastern district of Michigan, and to the next term thereof, from the whole of the said decree, and from each and every part thereof, and more particularly from that part thereof dismissing the libel of the said appel-
180 lants with costs, and from each part thereof which adjudges or decrees that the said libel of the said Hugh Coyne be sustained, or that he should recover any sum or damages, and from each and all parts of said decree by which it is adjudged or decreed that the said appellants or their surety or sureties, stipulator or stipulators, bondsman or bondsmen, or proctors, shall pay any sum or sums or costs, and from each and all parts of said decree which decrees or adjudges that there was any negligence, unskilfulness, or fault upon the part of the Newsboy or any of her officers or crew, or that there was not negligence, unskilfulness, or fault upon the part of the White Cloud, her officers or crew.

It is intended upon and in such appeal to make new allegations and proofs, but not to amend any pleading or make any new allegations therein, and to allege and prove that each and every allegation in the libel or in the
181 answer of these appellants, already filed in said district court, is true, and that each and every allegation in the libel or answer of the said Hugh Coyne is not true, and that the said Hugh Coyne sustained much less damages in consequence of the collision between the said vessels than that decreed to him; and that they intend upon the libel and answer already filed in said district court to pray for relief upon and in said appeal, that is to say, that the prayer of the libel of the said appellants be granted, and they have decree accordingly; and that the prayer of the libel of the said Hugh Coyne be denied, and the said libel of said Hugh Coyne be dismissed with costs to the said appellants, and that decree may be made accordingly; and that said appellants may have such other and further relief in the said circuit court as upon the pleadings and proofs they may be entitled to.

182 The said appellants intend to have this cause heard anew in the said circuit court, on the pleadings and proofs in the district court, and on other proofs to be taken, made, and introduced in the said circuit court; and they pray that the said decree, and each and every part thereof, may be reversed with costs, and that the said appellants may have such decree or decrees or relief in the said circuit as they hereby pray for; and they expressly pray for such relief as it is above stated they intend to pray for; and that the said appellants may have such relief and decree against the said Hugh Coyne and against the bondsman or bondsmen, stipulator or stipulators, surety or sureties, and proctor of the said Hugh Coyne, and each and every of them; and for such damages and costs in said district court and in said circuit court as the said appellants may be entitled to.

DOUGLAS & ANDREWS,
Proctors for Appellants.

GEO. B. HIBBARD, *Advocate.*

183 DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the foregoing to be the original proceedings in the cause named at the commencement of this

record, appealed from said court, together with all the depositions read on the hearing, the commissioner's reports, and the interlocutory and final decrees of said court, prepaired according to rule 46 of said court.

Witness my hand and the seal of said court, at Detroit, in said district, this 6th day of June, A. D. 1864.

[SEAL.] JNO. WINDER, *Clerk.*

Circuit court of the United States, district of Michigan, in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY.

It is hereby stipulated that the testimony of Abraham Andrew and Jacob Sups may be taken before S. A. Wood, a commissioner, upon the in-
184 terrogatories and cross-interrogatories herewith enclosed, and may be read on the trial without objection as to form, but subject to every objection, except as to matters of form, to which the same may be liable.

The commissioner shall append his certificate thereto in substance as follows:

That the witness was first duly sworn.

That the testimony was reduced to writing by the commissioner in the presence of the witness, and after being read over to the witness was by him duly signed.

That the commissioner is not of counsel or attorney to either party to this suit.

He shall then seal the depositions up, endorse on the outside the title of the case, direct the same to Wm. D. Wilkins, clerk U. S. court, Detroit, Michigan, pay the postage, and deposit in the post office.

DOUGLASS & ANDREWS, *Proctors for Respondents.*

In the circuit court of the United States for the east. dist. of Mich., in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY. } On appeal.

185 Questions propounded to Jacob Sups and Abraham Andrews, witnesses on part of libellant, at Manitowoc, Wisconsin.

First. What is your name, age, residence, occupation?

Second. In November, 1862, what observations and records did you keep of the wind and weather; at whose directions or request; for what purposes; and for how long a time have you so made observations and records; and to whom do you make report of the same?

Third. How do you tell the direction and force of the wind; by what instruments and machinery; at what times did you usually make such observations, and at what times did you so do on the 12th day of November, A. D. 1862?

Fourth. Please state what was the force and direction of the wind at Manitowoc, on said 12th of November, and the hours at which you made the observations.

Fifth. Please give a copy of the record kept by you at the time;
186 state whether the original is in your handwriting, and whether the entry was made at or near the time it purports to be, and whether the same was and is in accordance with the fact.

Cross-interrogatories.

First. State at what buildings or places your observations are made; at

what height are your instruments above the ground, and at what height above the lake, and at what distance from the lake shore.

Second. Describe accurately the situation of your respective places of observation with reference to other buildings or prominent natural objects. State whether there are any or what other buildings in the vicinity, the rise and nature of such other buildings, and their distance and direction from your places of observation.

Third. State whether there are any hills, ridges, or banks in the vicinity of your places of observation, and their rise, height, and distance from place of observation.

Fourth. State whether the wind at points in the lake, ten miles or more distant from your place of observation, always blows in the same direction that it does at your place of observation.

187 Circuit court of the United States of Michigan, in admiralty.

HUGH COYNE
vs.
THE BARQUE NEWSBOY *et al.* } On appeal.

Depositions of Jacob Sups and Abram Andrews, taken pursuant to the stipulation hereto annexed, upon the interrogatories and cross-interrogatories appended to said stipulation, this 26th day of May, A. D. 1864.

Jacob Sups, being duly sworn, says, in answer to the 1st interrogatory: My name is Jacob Sups. I am forty-six years of age. I reside in the town of Manitowoc, county of Manitowoc, and State of Wisconsin; and I am a farmer by occupation.

Answer to 2d interrogatory. In the month of Nov., 1862, I took observations of the wind and weather and kept records thereof, at the request of the Smithsonian Institution, at Washington, D. C., for scientific purposes. I have made such observations and records for about thirteen years, and I make my reports of the same to the Smithsonian Institution above-named, and have so reported for about 7 years.

Answer to 3d interrogatory. I tell the direction of the wind by a
188 weather-cock or weather-vane. I determine the force of the wind by my judgment, under directions and instructions from the Smithsonian Institution. I usually make such observations at 7 a. m., 2 p. m., and at 9 p. m. every day, and did so on the 12th day of Nov., 1862, at the same hours of the day above stated.

Answer to 4th interrogatory. On the 12th day of Nov., 1862, at 7 o'clock a. m., the wind was west, and blowing with a force of between 2 miles and 4 miles an hour; at 2 o'clock p. m. of the same day the wind was west, and blowing with a force of between four miles and twelves an hour, and at 9 o'clock p. m. of the same day the wind was southwest, and blowing with a force of between two miles and four miles an hour. The number of observations taken by me on that day were three, as already stated.

Answer to 5th interrogatory. The following is a copy of the record of my observations of the wind and weather made on the 12th day of Nov., 1862, to wit: 7 o'clock a. m., barometer (Parisian inches) 27 inches and 117-120 an inch; thermometer, 23° Farhenheit wind west, force between 2 and 4 miles an hour; the sky was covered with on tenth cumulous clouds above the lake. 2 o'clock p. m., barometer, 27 and 111-120 inches; thermometer, 34° Fahrenhiet; wind west, force between 4 and 12 miles an hour; the sky was nine-tenths cloudy; form of clouds cirustratus; direction of highest
189 cloud west, with a force of between 2 and 4 miles an hour; sky entirely clear. The original record is in my handwriting, and was made at or near the time it purports to have been made, and is in accordance with the facts.

Answer to 1st cross-interrogatory. My observations were made at my dwelling-house, in the town of Manitowoc, Wis. My thermometer and barometer are about 6 feet above the ground, and the weather-vane is about 36 ft. above the ground. My residence or dwelling-house is about 80 ft. above the lake, and about 1 mile from the lake shore.

Answer to 2d cross-interrogatory. The nearest building to my dwelling is not within ¼ of a mile, except my barn and out-houses, which are all west from my residence, and about 100 ft. therefrom; one barn is about 40 by 60 ft., and the other about 24 by 30 ft. on the ground. They are both frame buildings.

Answer to 3d cross-interrogatory. There is a bank in front and east of my house, descending to the river below, of about 80 ft. in hight; the declivity begins about 31 ft. east of my house, and my house stands on top of the bank.

Answer to 4th cross-interrogatory. The river at points in the lake
190 ten miles or more from my place of observations does not always blow in the same direction as it does at my place of observation.

JACOB SUPS.

Subscribed and sworn before me this 26th day of May, A. D. 1864.

S. A. WOOD,
Com'r and Notary Public for Manitowoc Co, Wis.

Abram Andrews, being duly sworn, in answer to the 1st interrogatory says: My name is Abram Andrews. I am 42 years old. Reside in the village of Manitowoc, co. of Manitowoc and State of Wis., and my occupation is light-house keeper at the village of Manitowoc.

Answer to 2d interrogatory. In Nov., 1862, I kept a record of the wind and weather in a book furnished by the sec'y of the light-house board at Washington, D. C., with printed headings. Such observations were taken at 6 o'clock and 47 minutes in the morning, and at 4 o'clock and 41 minutes in the afternoon of every day during said month of Nov., and at the direction and request of the master of suplies for light-houses. I have made such observations and records since the 1st of June, 1861, and have reported the same quarterly to the inspector of lights, Detroit, Michigan.

191 Answer to 3d interrogatory. I tell the direction of the wind by means of a weather-vane. I determine the force or velocity of the wind by my judgment, having no instruments for that purpose. I usually make such observations in the morning and evening of every day, and on the 12th day of Nov., 1862, made them at 6 o'clock and 47 minutes in the morning, and at 4 o'clock and 41 minutes in the evening.

Answer to 4th interrogatory. In the morning of the 12th day of Nov., 1862, the wind was west and fresh, and in the evening of the same day it was southwest and moderate, and my observations on that day were made at the hours stated in my answer to the 3d interrogatory.

Answer to 5th interrogatory. The following is a copy of the observations of the wind and weather kept by me on the 12th day of Nov., 1862, to wit: "Light-house at Manitowoc, Nov. 12, 1862: a. m., wind W., force fr., weather clear; p. m., wind SW., force mod., weather cloudy." The original is in my handwriting, and the entry was made the day following, and the same was and is in accordance with the fact.

Answer to 1st cross-interrogatory. My observations were made at
192 the light-house in the village of Manitowoc. The height of the weather-vane (which is the only instrument I have) is about 80 feet above the lake and about 100 ft. from the lake shore.

Answer to 2d cross-interrogatory. The light-keeper's residence is about 10 ft. north of the light-house, and the next nearest building north is a

dwelling, about 130 ft. distant. The nearest buildings west are a windmill and a foundry buildings, about 80 ft. distant. There are no buildings either north or south of the light-house, except a small shanty or two.

Answer to 3d cross-interrogatory. There are no hills, ridges, or banks in the immediate vicinity of my place of observation, except the bank of the lake, east of the light-house, which bank is about 30 ft. high. This bank descends from the light-house to the lake.

Answer to 4th cross-interrogatory. I cannot state whether at points in the lake 10 miles or more distant from my place of observation the wind always blows in the same direction that it does at my place of observation or not.

ABRAHAM ANDREW.

Subscribed and sworn to before me this 26th day of May, A. D. 1864.

S. A. WARD,
Comm'r and Notary Public for Manitowoc Co., Wis.

193 I hereby certify that the above-named witnesses, Jacob Sups and Abraham Andrews, was severally duly sworn before giving their testimony as above written, by me and subscribed by them; that I reduced the testimony of said witnesses to writing in the presence of each of said witnesses, respectively, and there read the testimony of each witness for the witness who gave it, and who after such reading signed the testimony so given by him, and that I am neither counsel nor attorney to either party in this suit.

Dated Manitowoc, Wis., May 26th, 1864.

S. A. WARD, *Commissioner.*

Comm'r fees		$3 00
Witnesses' fees, (each 81 c.)		1 62
		4 62
Stamps		15
		4 77
Postage		18
		4 95

Paid by S. D. Markham.

S. A. WARD, *Comm'r.*

194 Rec'd from post office at Detroit, opened and filed in open court on June 1, 1864.

WM. D. WILKINS, *Clerk.*

195 In the circuit court of the United States for the seventh circuit and eastern dist. of Mich., in admiralty.

In the matter of the libels and claims of Hugh Coyne *vs.* the barque Newsboy, and Bentley, Hoyt, and Clark, *vs* sch'r White Cloud, on appeal, before Wm. D. Wilkins, a commissioner of said court, at Detroit, Mich., on June 3, 1864.

Testimony of Clark W. Newhall, Charles N. Cramer, and Christian H. Bergh, taken before said comm'r, at said time and place, on behalf of and at request of said Hugh Coyne, libell't, in presence of J. S. Newberry, esq'r, proctor for said Coyne, and Geo. Andrews, esq'r, proctor for said Bentley, Hoyt, and Clark. Said Andrews, proctor as aforesaid, consenting to the

taking of said testimony, waiving all objections thereto on the ground of irregularity, informality, or insufficient notice, and saving and reserving all objections as to irrelevancy or incompetency.

And the said Clark W. Newhall, being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say:

I live in Detroit. Am harbor master at Detroit. Have sailed 37 years, and been master 24 years, all on the lakes. I have had about 28 or 30 years experience up and down Lake Michigan's western coast, but not as a coaster. Was engaged constantly for 3 years on a coasting vessel from Green Bay to Milwaukee and Chicago, stopping at the intermediate ports, Twin Rivers, White Fish Bay, Kewanee, and other ports, carrying supplies to men who were fishing there, and carrying fish away

196 Question. Suppose a vessel in ballast starting from about a mile off Kewannee, with a 4 to 6 knot breeze off the land, should steer S. ½ E., about how far off Twin River Point would she pass?

Answer. She would pass the point from ½ to ¾ of a mile; if she made much drift she might be a little further off; it depends a good deal on the drift. Some drift more and some less, at least that is the case with the compasses I have been steering with, and I had while in the fishing trade one of the best compasses I ever saw. There is a variation from ¼ to ½ a point in compasses. Some would carry them a little nearer and some further off.

Question. Suppose a vessel under the same circumstances should steer S. by W. ½ W. from the same starting point, where should she go?

Answer. She would run ashore before she got to the point several miles, probably four or five miles, before she reached the point.

Cross-examined.

I do not think that a wind stronger than a 4 to 6 knot breeze would blow the vessel further off into the lake. On the contrary, the stronger the wind the better the vessel would keep her course. I always sailed with the same compass on the route in the coasting trade above referred to. Often in going direct to Chicago we held the western coast of the lake quite closely, and then I made the same observations as above referred to while in

197 the coasting trade. In starting from Kewannee and running direct to Chicago without any variation we would run from S. ½ E. to S. by E., starting at an offing a mile or two from the shore. I never steered the course direct from Kewannee to Chicago. I have steered the course mentioned in my direct examination frequently. On those occasions I have steered exactly the course stated in my answer. Once, when the wind was off land, I took an offing from Kewannee and steered S. by E., that would carry us a little further than we usually go when the wind was off the land. I have frequently steered the course S. ½ E. referred to in my direct examination. On these occasions I came out at the distance mentioned, at from ½ to ¾ of a mile from Twin River Point. I know by actual experience and by the charts the exact course from Kewannee to Twin River Point, which is as above stated. The actual course by the chart from a mile off Kewannee to ¾ of a mile or so from Twin River I cannot give from actual examination of the chart. I steered that course before any charts were made. On the government charts the courses are laid down from the true meridian, and mariners' compasses vary therefrom. Whenever I have had occasion during all the time in the 28 years mentioned, I have steered that

198 course. I cannot state the actual variation at that point of the compass from the magnetic meridian, as I never compared it. At the points on the lake the compasses vary from the true meridian from a 1-16 to

¼ of a point; more at some places than at others, as at some places there is a local attraction. I never had two compasses that agreed exactly. They will vary on the same vessel, some of them two degrees and some from ¼ to ½ a point. Steering that course from Kewanee and continuing it I should think it would not bring you up near Chicago, but somewhere near Kenosha. I never steered a direct course from Kewannee or Twin Rivers to Chicago. The variation referred to is usually west. I never paid a great deal of attention to it. It don't always vary west on all compasses. Some vary east and some west, but generally the variation is to the west.

CLARK W. NEWHALL.

Sworn and subscribed before me June 3, 1864.

WM. D. WILKINS,
U. S. Comm'r for the Eastern District of Mich.

And the said Charles N. Cramer, being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows, viz:

I live at Racine, Wis. Have sailed since 1839; as an officer of ves-
199 sel since 1848; as a master since 1851, sailing on all the lakes. Have been engaged running up and down the western shore of Lake Mich. since 1844. I am acquainted with that coast and the courses on the coast.

Question 1. Suppose a vessel in ballast starting from about a mile of Kewannee with a 4 to 6 knot breeze off the land, should steer S. ½ E. about how far off Twin Rivers Point would she pass?

Answer. About 2 miles. I mean by that if the vessel was "by the wind."

Question 2. Suppose a vessel under the same circumstances should steer S. by W ½ W. from the same starting point, where would she go?

Answer. She would fetch up ashore at about Rowley's Bay, and before she got to the point. The compasses on different vessels vary in the same locality. Different vessels starting from the same point, on account of the variation of their compasses, would run some further in shore and some further off shore.

Cross-examined.

I have sailed exactly the course stated in my first answer. I cannot say that I ever started from the vicinity off Kewannee by the wind as sailed by the compass S. ½ E. and came out about 2 miles from Twin River Point. I do recollect steering that course with a fair wind, and that course carried me clear up the point a mile or a mile and a quarter off. I have done it a good many times, cannot say how often. Don't know the actual
200 course by the true meridian between these two points. There is less variation of the compasses when steering due east or west than by any other course. Often compasses will vary ½ a point when steering any other course. I never took a straight course from the vicinity of Kewannee to Chicago. The course from Kewannee of S. ¼ E. would about fetch Grosse Point 12 miles north from Chicago. Cannot say whether these compasses on Lake Michigan always vary in one direction from the true meridian. Different compasses vary, some one way and some another, some a little more than others. Some compasses vary one way and some another, but whether east or west I haven't noted particularly enough to know. Some vary to the east of northward, and some to the west of northward. During all the time I have navigated that coast I have not always steered the same course be-

tween those two points. I have been governed by the wind. A wind off shore would take me farthest out into the lake.

C. N. CRAMER.

Sworn and subscribed before June 3, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. Dist. of Mich.

And the said Christian H. Bergh, being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and
201 nothing but the truth, did depose and say as follows: I live in Chicago. Have sailed 18 years; as an officer 13 years, and as a master since 1852. During that time I have navigated up and down the western shore of Lake Michigan more or less all the time. I am acquainted with the courses between different points on the west shore of Lake Michigan.

Question 1. Suppose a vessel in ballast starting from a mile off Kewannee with a 4 to 6 knot breeze off the land should steer S. ½ E., about how far off Twin Rivers Point would she pass?

Answer. From a mile and a half to two miles. I mean if she was "by the wind."

Cross-examined.

I have actually sailed that course by the compass "by the wind," and came out at about that distance. I haven't always sailed that course during all this time. Since I have been master I haven't always sailed this course. If the wind is fresh and puffy, we hug in shore as close as we can get. I have used a good many different compasses; they almost always vary from each other. Some vary east and some west of the true meridian, from less than ¼ to ½ a point each way from the true meridian.

Question. When you say that sailing a course S. ½ E. from a point off Kewannee would bring you out at 1¼ to 2 miles of Twin Rivers Point, how do you suppose your compasses to stand—exactly on the meridian, vary-
202 ing west or varying east?

Answer. I should think they would be standing on the meridian. In making these trips I don't know that I ever took any particularly notices whether my compasses were always on the meridian. Compasses always vary a little. On these several occasions when I sailed this course I never observed which way my compasses varied from the meridian.

Redirect.

In sailing my vessel I sail by my compass courses, and those are the courses that I learn from experience.

CHRISTIAN S. BERGH.

Sworn and subscribed before me June 3, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. Dist. of Michigan.

Commissioner's fees:

Taking depositions, 22 fol., at 20c	$4 40
3 oaths, at 10c	30
	4 70

Witnesses' fees:

3 witnesses at $1 50 each, $4 50. Paid by libell't Coyne.

203 In the circuit court of the United States for the seventh circuit and eastern district of Michigan, in admiralty.

HUGH COYNE, libellant,
vs.
THE BARQUE NEWSBOY, AND STANFORD, her master. } On appeal.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, owners of the barque Newsboy,
vs.
THE SCHOONER WHITE CLOUD, HER TACKLE, APPAREL, and furniture, and George Elsey, late her master. } 755.

Testimony of Stephen R. Kirby and Jasper Vlete, witnesses on behalf of claimants of barque Newsboy, taken at Detroit, Michigan, on Oct. 20th, 1864, before W. D. Wilkins, U. S. commissioner east. dist. of Michigan, by consent of and in the presence of George Andrews, esq'r, proctor for claimants barque Newsboy, and Jno. S. Newberry, esq'r, proctor for libellant Hugh Coyne, and the said Stephen R. Kinley, being about forty-one years old, and being by me carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, did de-
204 pose and say as follows:

I am a civil engineer at present, and for the last 4 or 5 years. That includes with me the business of land surveying. During this time I have generally been chief, as city surveyor of East Saginaw for 2 years, and had done that work some time previously. Have been a consulting engineer on the Flint and Piere Marquette railway, and am now. I assisted in laying out the city portion of it. Previous to the last 4 or 5 years I have been a sailor and ship-builder for 20 or 21 years. I commenced before the mast and so served for 7 or 8 years, and since then have been master and mate during the rest of the term of 11 or 12 years. Don't remember exactly how much of each year. Seven or eight years of that time I was on a propeller on the upper lakes between Buffalo and Chicago, for four years of which time I was mate and sailing master of the propeller Niagera. The other four years or thereabouts I was mate of the Westmoreland, and when she was lost, on her second season, I went as master of the barque Sunshine, in the fall of 1854 and all of 1855. These vessels were all engaged in the route between Buffalo and Chicago, going occasionally to Saginaw and Green Bay. As an officer of the vessels above-named, I was in the habit of coasting up and down the west shore of Lake Michigan
205 as often as once a fortnight. I am familiar with all the coast, perhaps, mostly from Bailey's Harbor, and around the "Door." I was in the habit of touching at all the western shore ports that had piers, from Manitowoc southwardly. "Twin River Point" is a bold point, about 7 miles NE. from Manitowoc. "Kewannee" is 17 or 18 miles north of "Twin River Point." Vessels from Buffalo to Chicago usually keep the land aboard as far as Milwaukee, and then keep a straight course for Manitou Islands, except it is late in the fall, and then they generally keep the west shore aboard as far as they can. During my experience as officer of these vessels I have frequently had occasion to coast from off Kewannee down to Manitowoc, perhaps as often as three or four times a season. When there are strong westerly winds we always haul over to the west shore as quick as we can.

Qu. State what course you generally sailed with a propeller in coasting from off Kewannee, past Twin River Point, to Manitowoc.

Ans. If pretty close in, say a mile from shore or thereabouts, we would steer south, the general lay of the land along the coast N. and by E., and S.

and by W. when you are out any distance. Twin River Point sticks out and Kewannee lays almost due north from the end of the point.

206 Qu. Sailing the course you have described from Kewannee south, how close to Twin River Point would you pass?

Ans. If you were a mile off Kewannee, you would pass the point about a mile off or a little less; say, perhaps, three quarters.

Qu. State whether you have recently had anything to do with taking the bearings of Twin River Point and Kewannee.

Ans. I have; going there for that purpose, and taking an engineer with me from Milwaukee, named Joseph Vleet, a railroad engineer. We took a very good transit instrument, with telescope attached, a single one, examining the needle before we started, and seeing it was in good order, and being careful to keep it so. We arrived at Kewannee Sept. 29th, 1863, and got on the bluff point on the north side of the river, about 75 or 80 ft. high, and 1,600 or 1,800 ft. north of the pier. From there we took the bearings to the point, which we could see very distinctly, it being nice clear weather. The bearings by the compass was S. three degrees east; and the most northernmost land N. 15° 30′ east. We both looked at the instrument. We then found Mr. Keith, the deputy co. surveyor of Kewannee, and he gave us

207 the section courses where we could see distinctly between them across a marsh. He had the field rates of the country around there. We got the instrument on that section line, and found that it bore north 5° 20′ east. We had him get his compass and set it on the same line, and found hardly any variation at all between the two instruments. There are 11¼ degrees of the compass to a sailor's point. We then got to Manitowoc on a vessel called the Ebenezer, a sch'r, and sailed down the coast from Kewannee to that place. On the passage, about half way to Manitowoc, and about 3 miles off the land, in the light of the bay, Mr. Vlete tested his compass with the vessel's compass. The wind was about E. SE., the vessel about close hauled; the wind continued there till we got just below the point, there being other vessels with us; then the wind headed off till we just got into Manitowoc. When we got in the wind was about SE. At Manitowoc we made a survey, taking the bearings from the light-house to Twin River Point, and found that bearing to be north 47° 30′ east. We then got a man who had been the principal surveyor in that country to establish for us the courses of the section lines there. We got on that line and found it bore north 4° 28′

208 east, looking north. The section line looking south from where we stood bore 5° 28′ west. In giving these bearings I mean the magnetic meridian. We found a big windmill tower 75 or 80 f't W. ½ S. from the light-house, with no arms or sails in it, and at least 20 feet higher than the light-house.

Qu. State, from your experience as a sailor, how much of an indication the wind on shore blowing off the land is of the direction in which it is blowing outside.

Ans. It always varies more or less a point or two, unless it blows very heavy, and even then it varies a little.

Qu. Suppose a vessel in ballast starts from 3½ miles off Kewannee and steers south ½ east, making one point lee way into the lake, how far off Twin River Point would she pass?

(Objected to as irrelevant, not founded upon any proved facts.)

Ans. About eight miles.

Qu. If a vessel starting 3½ miles of Kewannee desires to pass Twin River Point at a distance of 3 miles, and the vessel is making one point lee way to the eastward, what direction must she steer?

Ans. She would have to steer south by west.

Qu. If a fore-and-aft schooner is sailing with a 6-knot breeze as
209 close to the wind as she can go, which will she do the quickest, luff or keep away?

Ans. She will luff the quickest, of course; she will fairly fly in the wind. She will come head to wind in once or twice her length where she wouldn't keep off a point and a half or two points without going ahead in eight times her length.

Cross-examination.

I was present at the trial of this case in the district court; was not examined or cross-examined as a witness. I made the charts and maps mostly that were presented by Mr. Hibbard on the argument; that is, I copied them from the maps as near as I could. I made the diagrams; that is, I did the ink work. I never got any witnesses for the trial; never asked any; didn't know who were to be witnesses. I consulted freely with Mr. Hibbard about the case. I educated myself in the first place in navigation, and turned it into engineering when I came ashore. I understand the principal branches of civil engineering; my education as surveyor and engineer is simply a practical one. I have all the standard works and text-books.

Between compasses on vessels and steamers there are sometimes
210 variations between different ones, as much as even a point. The last season I sailed continuously as master was in 1856.

Qu. Did you ever, starting a mile off Kewannee, run from there to Manitowoc? and if so, when, where was it, and in what vessel?

Ans. I never did it as a specialty. I never touched at Kewannee at all when I was a sailor.

Qu. At the time you made the survey spoken of, judging by the course of the section line, what was the variation of the compass used by you?

Ans. About 5° east; judging by that line, it was 5° 20′.

Qu. Did you find, from any source, what the variation of the compass was at the time the original surveys were run?

Ans. Yes; we got it at the U. S. land office. It varied in the five townships between Manitowoc and Kewannee from 6° 5′ to 6° 25′.

Qu. Do you mean to swear that the wind is always different a few miles off the shore, or only so at times?

Ans. Yes; almost invariably when near high lands.

Qu. If a vessel with the wind off shore starts one mile off Kewannee or steers S. by W. ½ W., and makes ½ a point lee way, where will she go in reference to Twin River Point?

(Objected to that the hypothesis as to the distance off Kewannee
211 does not apply to any of the facts proved in this case.)

Ans. She would fetch up on the point.

Redirect examination.

Variation on compasses is usually greatest on steam vessels; never noticed it much on vessels, except when you placed two compasses close together, when one would affect the other; but when taken away I never observed much variation. There is no particular range of variation on steam vessels, but the variation is in reference to the local attraction. The variation on vessels is caused by local attraction combined with the general deviation of the vessel. The variation I spoke of in answer to Mr. Newberry was not the general deviation, but that caused by the influence of one compass or another.

Recross-examination.

Qu. Have you not seen a variation of a quarter to a half a point between two compasses in the same binnacle?

Ans. I have.

Redirect examination.

Two compasses in the same binnacle would be more likely to vary than when placed 20 feet apart.

S. R. KIRBY.

Sworn and subscribed before me Oct. 20, 1864.

WM. D. WILKINS,
U. S. Comm'r, East. Dist. of Michigan.

212 And the said Joseph Vlete, being duly sworn, and being 40 years old, I did carefully examine said witness, and he did thereupon depose and say as follows:

Am a surveyor and civil engineer; have been so 20 years. Have followed all branches of the business, from assistant to chief engineer; am chief engineer of the Milwaukee and Horicon and of the Milwaukee and Superior railroad; was resident engineer on the La Crosse and on the Milwaukee and Missippi RR., and acting chief on both. I took some bearings at Kewannee on Sept. 29, 1864. I went with Mr. S. R. Kirby, at his request. Mr. Keith, dep. co. surveyor, was with me when we took the bearings. I used a transit instrument with telescope attached. I posted myself on a bluff on the north side of Kewannee River, about 500 f't from its mouth and about 1,800 f't from the pier. I took the bearing of Twin River Point from that position; I could see it very distinctly. The magnetic bearing from where I was was S. 3° east. I tested my instrument with that of Mr. Keith, the dep. co. surveyor; they were very nearly alike; no difference perceptible. We tried it on a line nearly a mile long at a target. I set mine on it first, he then set his afterwards, and they agreed practically. My instru-

213 ment was a very superior one. Mr. Kirby examined the bearings of the instrument on Twin River Point from Kewannee when I did. We then sailed on sch'r Ebenezer to Manitowoc the next Sunday. On the voyage I compared my instrument with the two compasses on the vessel; they seemed to agree very nearly with mine, as near as I could tell with the means at my command on the vessel, there being no variation. The vessel's compasses did not show very fine differences. I saw the shore all the distance as we went down. It was in the day time. The shore at Twin River Point is timbered; neither very heavy or very light timber. The timber at the point came very near the water's edge. At Manitowoc light-house I took the bearing of the land to the northward extending furthest into the lake. It was N. 47½° east. The bluff at Kewannee is 75 to 80 feet high. The wind on the passage down was nearer E. than SE. When we got into Manitowoc it was SE., or a little further south than that. Should judge there was 15 to 20 degrees difference after getting into Manitowoc from what it was out in the lake. My attention was called to this by the captain, who had frequently spoken of it on the voyage.

214 Qu. If a line is started 3½ miles off Kewannee and run S. 16° 52½' east, how near Twin River Point would it pass, assuming the distance to be 17 miles?

Ans. Eight miles and over; say 8 miles and 43-100ths into the lake.

Qu. Suppose a line is drawn, starting 3½ miles off Kewannee and running so as to pass 3 miles outside of Twin River Point, what course would

that line run, assuming 17 miles distance between Twin River Point and Kewannee?

Ans. S. $1\frac{3}{4}°$ west.

Cross-examined.

Qu. Under the circumstances in the last question stated, starting 1 mile off Kewannee and running to a point 3 miles out in the lake off Twin River Point, what is the course?

Ans. S. $13\frac{1}{4}°$ east. I don't remember to have ever tested the compass in my transit by the true meridian. We have a partial test by useing it in my survey in Milwaukee every day. In such surveys there are thousands of tons of iron I have to run over. I rarely ever use my compass in running my lines. As a general thing section lines in surveys are rarely ever parallel.

Qu. What was the variation of your compass from the true meridian at Kewannee, assuming that the section lines pointed out to you by the surveyor were on the true meridian?

215

Ans. 5° 20′ east. Looking south from the same point it would be 5° 20′ west.

Qu. You speak of the wind being different out in the lake and in shore when you arrived at Manitowoc. What was the difference of time between your observation out in the lake and in shore?

Ans. It was a quarter to a half an hour, and meanwhile we changed our course.

Redirect exam'n.

As a general rule the township lines are more accurate than the interior section lines. The township lines are run first and then subdivided afterwards. There has got to be a difference between the township lines running north and south of different townships; the difference is not so great as between interior lines.

JASPER VLETE.

Sworn and subscribed before me on Oct. 20, 1864.

WM. D. WILKINS,
U. S. Comm'r, East. Dist. of Mich.

The above depositions were taken by me on the day and year therein named, in the presence of the proctors for both of the parties to the suit in which they were taken, and with the consent of said proctors that the same should be used in evidence on the trial of said cause in the U. S. circuit for the east. dist. of Mich. on appeal.

216

Oct. 20, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. Dist. of Mich.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Be it remembered, that on this sixteenth day of November, in the year one thousand eight hundred and sixty-four, I, Daniel Goodwin, jr., a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and

the act entitled "An act to establish the judicial courts of the United
217 States," passed Sept. 24th, 1789, did cause personally to appear before me, at my office, in the city of Chicago, in said northern district of Illinois, Albert E. Goodrich, to testify on the part of Hugh Coyne in a certain cause depending in the circuit court of the United States for the eastern district of Michigan, at Detroit, wherein Hugh Coyne, owner of the schooner White Cloud, is libellant, and the barque Newsboy and Stanford, her master, are defendants.

And the said Albert E. Goodrich was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid. I carefully examined the said Goodrich, and he did thereupon depose and say as follows, to wit:

To the first interrogatory. My name is Albert E. Goodrich. My age is 38 years. My present occupation is that of a steamboat owner. I was engaged 17 years or parts of years in different capacities in sailing on the lakes, ten or eleven years of which were spent exclusively sailing on Lake Michigan. I own 3 steamboats (side-wheel) and 1 propeller. Besides
218 these I have owned four others in whole, and have been interested in 3 others.

To the second interrogatory. I am acquainted with the west coast of Lake Michigan practically as a master. I have had a line of boats running on this coast principally since 1855. In 1855 I ran from Chicago to Green Bay, touching all the points mentioned, (Manitowoc, Twin Rivers, and Kewannee.) In 1856 I ran between Milwaukee and Twin Rivers, stopping at intermediate points. Since then I have had a line of boats running on that shore.

To the third interrogatory. I have run the Huron on the route from Manitowoc to Kewannee during the season of 1855 and 1856. I landed at those points, though they were not the termini of the trips. I was then master of her.

To the fourth interrogatory. We steered S. by E., I think. I think that gave the Two River Point a wide berth. We went out from a quarter to ½ of a mile before taking her course to Twin River Point, and it brought
219 us from a half a mile to a mile from Twin River Point. We intended to give that point a half a mile berth in fair weather. The course I steered brought us out about a mile from the point. The steamer Huron did run closer to Twin River Point than vessels and propellers from lower lake ports to Milwaukee and Chicago. I never saw a lower lake vessel or steamer inside of me from Twin River Point and Kewannee that I remember of.

To the fifth interrogatory. There are great variations in the compasses of different steamboats and vessels on the lakes. I have known a variation from a quarter to a point. That is a common thing on steam vessels. I don't know how it is on sail vessels. The Arctic used to steer from Kewannee to Two River Point south. The Sea Bird and Comet (boats I now own) steer south half east.

To the first cross-interrogatory. When the wind was settling on shore we made calculations for what lee way she would make, depending on how hard it was blowing and how much sea there was rolling. If the wind
220 was off shore we were not so particular, but calculated to give the point a berth of ½ a mile.

To the second cross-interrogatory. We always steered regular courses by the compass, making allowance for the weather. If it was not foggy but clear, we would, of course, correct any mistake the wheelsman might make by the land, but if at all foggy we depended entirely on the compass, expecting to find soundings with the lead when we came near the point.

To the third cross-interrogatory. I never tested the compasses, but I know

the compasses of the Huron run her farther to the westward than any other I ever saw when she was going south, and farther to the eastward when she was going north. I think her compasses were changed in 1857, after she was sunk and raised.

To the fourth cross-interrogatory. My impression is that it is, but I am not positive.

221 To the fifth cross-interrogatory. I have a distinct recollection of sailing the exact course indicated in my answer to the fourth interrogatory, and passing the point at the distance I mentioned. This was in 1855 and 1856.

ALBERT E. GOODRICH.

Subscribed and sworn to before me this sixteenth day of November, A. D. 1864.

D. GOODWIN, JR.,
U. S. Comm'r in and for the Northern District of Illinois.

In the circuit court of the United States for the 7th circuit and eastern district of Michigan, in admiralty.

HUGH COYNE, OWNER OF THE SCH'R WHITE CLOUD,
vs.
THE BARQUE NEWSBOY AND STANFORD, HER MASTER.

It is hereby stipulated that the following interrogatories and cross-interrogatories, to be propounded to A. E. Goodrich, esq'r, of Chicago, may
222 be answered under oath before any commissioner of the United States in Chicago, and returned by him addressed to the clerk of the circuit court of the U. S., at Detroit, Michigan, Wm. D. Wilkins, esq'r, and when so returned, with the certificate of said officer that the same were answered in his presence by said witness under oath, and that he is not of counsel or related to either party in said suit, the same may be read, subject only to objections as to competency and relevancy, in this suit, and also the cross-libel suit.

Detroit, Nov. 11, 1864.

NEWBERRY & POND, *Proctors for Coyne.*
DOUGLASS & ANDREWS, *Proctors for Newsboy.*

Interrogatories propounded to A. E. Goodrich, esq'r, of Chicago.

First. State your name, age, residence, your present occupation; how many years you were engaged in sailing on the lakes, and especially Lake Michigan; how many steamboats you now own in whole and in part, and how many you ever owned in whole or in part.

223 Second. Are you acquainted with the west coast of Lake Michigan practically, as a master? How many years have your boats run principally on that coast? How many years have they extended their trips to Manitowoc, Twin Rivers, and Kewannee?

Third. Did you ever run the steamboat Huron on the route from Manitowoc or other ports to Kewannee, and when? and was you master of her?

Fourth. What course did the Huron steer from Kewannee to pass Twin River Point, by her compasses? How far out from Kewannee piers did you go before taking your course to Twin River Point, and how close to Twin River Point did that bring you? Did the Huron run closer to Twin River Point than vessels and propellers from lower lake ports to Milwaukee and Chicago?

Fifth. Are there great variations in the compasses of different steamboats and vessels on the lakes. And state what variations you have known in steamboats and vessels commanded by you.

224 *Cross-interrogatories.*

First. On the route mentioned in the fourth direct interrogatory did you always run the same course by your compasses?

Second. Did you not on that route usually depend for your guidance in a great measure upon seeing the shore or some point on the shore?

Third. Did you ever test the compasses used by you on that route to ascertain their variation from the true meridian? and what was the variation of each of said compasses from the true meridian while on the Huron?

Fourth. Is not the variation of compasses usually greater, and the compass less reliable on steamboats than on sail vessels?

Fifth. Have you a distinct recollection of having sailed the exact course indicated in your answer to the fourth direct interrogatory, and of leaving Kewannee at the distance and passing Twin River Point at the distance you have there mentioned? If so, when was it?

225 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

I, Daniel Goodwin, jr., a commissioner, duly appointed by the circuit court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed Sept. 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of the said deposition named, and that he resides at Chicago, Illinois, and that said deposition is taken pursuant to a stipulation hereto annexed. I further certify that on the sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by

226 the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. And the deposition was by me reduced to writing in the presence of the said witness, and from his statements, and after carefully reading the same to the said witness, he subscribed the same in my presence. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.]

D. GOODWIN, JR.,
U. S. Commissioner, duly appointed by the Circuit Court of the United States for the Northern District of Illinois.

Commis'r fees	$5 00
Witness	1 50
	6 50

227 And now at this day, to wit, the sixteenth day of November, of the term of November, in the year of our Lord one thousand eight hundred and sixty-four, before the judges of said circuit court of the United

States for the seventh circuit and eastern district of Michigan, now here, come the parties aforesaid, by their respective proctors aforesaid, and the record of the court below being seen and inspected by this court, it is ordered, adjudged, and decreed that the judgment and decree of the district court of the United States for the eastern district of Michigan, between the parties aforesaid, be, and the same is, now by the court here affirmed. It is therefore considered, adjudged, and decreed by this court that the said Hugh Coyne, libellant and appellee, do recover of the said James R. Bentley, Jesse Hoyt, and Charles Clark, claimants of the barque Newsboy, the appellants, the sum of six thousand two hundred and fifty-three dollars and forty-one cents damages, together with the sum of one hundred and twenty-nine dollars and seventy cents for his costs and charges by him about his suit laid out and expended. And hereupon said appellants, by Douglass & Andrews, their proctors, enter their appeal of this case to the Supreme Court of the United States. And the court hereby allow said appeal, and fix the
228 amount of the bond to be given by the appellants on said appeal at the sum of two thousand dollars.

(Signed) NOAH H. SWAYNE, *Justice.*
(Signed) ROSS WILKINS, *Dist. Judge.*

Judgment signed Nov. 16, 1864.

WM. D. WILKINS,
Clerk U. S. Circuit Court, East. Dist. of Mich'n.

229 The circuit court of the United States for the seventh circuit and eastern district of Michigan.

HUGH COYNE, libellant and appellee,
v.
THE BARQUE NEWSBOY, JAMES R. BENTLEY, JESSE HOYT, and Charles Clark, claimants and appellants.

To the Supreme Court of the United States:

The petition of appeal of James R. Bentley, Jesse Hoyt, and Charles Clark, the above-named appellants, respectfully showeth that on or about the 25th day of May, 1863, the above-named libellant, Hugh Coyne, exhibited his libel in the district court of the United States for the eastern district of Michigan, against the above-named barque Newsboy and Edward Stanford, her master, claiming damages against said barque and her master for injuries alleged to have been sustained by a certain schooner called the White Cloud, whereof said libellant was alleged to be the owner, in consequence of a collision between said schooner White Cloud and said barque Newsboy, and praying, amongst other things, that said barque and her said captain might be condemned to pay the said demand and the costs.

Process out of said court was served upon said barque and on said Stanford; and thereupon the said Stanford, with the above-named James R. Bentley, Jesse Hoyt, and Charles Clark, owners of said barque Newsboy, did on or about the 19th day of August, 1863, file their joint answer to said
230 libel, praying that the said libel might be dismissed with costs, as by the said libel and the said answer will appear.

Said cause came on to be heard before the Honorable Ross Wilkins, judge of said district court, on or about the 9th day of February, 1864, upon the pleadings and proofs therein. And the said judge having advised therein, on or about the 5th day of April, 1864, made a decree in said cause, whereby it was decreed that the libel of said Coyne against said barque be sustained, and a decree entered thereon for damages, and that it be referred to William D. Wilkins, a commissioner of said court, to ascertain the damages sustained by said libellant on occasion of the collision set forth in his libel, to take

such testimony as might be offered in relation thereto by either party, and to report the amount proved to said district court, as by reference to said decree will appear. Under said decree a reference was had to said commissioner, who reported that there was due from the said barque Newsboy, her owners or claimants, to the said libellant, for damages sustained on account of the collision aforesaid, the sum of five thousand one hundred and thirty-four dollars and 55 cents, with interest thereon from the 12th day of November, 1862, to the date of entry of final decree in said cause; which report was on the 12th day of May, 1864, confirmed by the final decree of said court, which decreed that the total amount then due as aforesaid to said libellant was the sum of five thousand six hundred seventy-three dollars and 66 cents, and the costs of said suit.

231 The above-named appellants, James R. Bentley, Jesse Hoyt, and Charles Clark, thereupon appealed from said decree to the circuit court of the United States for the seventh circuit and eastern district of Michigan, and such proceedings were thereupon had that said cause was on the 16th day of November, 1864, heard in said circuit court, and the said circuit court, by a final decree then made in said cause, in all things affirmed the said decree of said district court; and a final decree was made and rendered in said circuit court in favor of said Coyne and against said appellants for the sum of six thousand two hundred and fifty-three dollars and forty-one cents damages and his costs.

And these appellants are advised and insist that the said decree of said circuit court is erroneous in each and all its parts and particulars, and in the fact that the said Hugh Coyne was not entitled to any of the relief decreed to him by the said decree. And these appellants, therefore, in open session of the said circuit court, and at the same term and session thereof at which said decree of said circuit court was rendered and made, appeal to the Supreme Court of the United States from the whole of said decree, and from each and every part thereof, and from each part thereof which decrees that the libel of said Hugh Coyne be sustained or that he should recover any sum or damages, and from each and all parts of said decree by which it is adjudged or decreed that the said appellants, or their surety or sureties, stipulator or stipulators, bondsman or bondsmen, or proctors shall pay any sum or

232 sums or costs, and from each and all parts of said decree which decrees or adjudges that there was any negligence, unskilfulness, or fault upon the part of the said barque Newsboy, or any of her officers or crew, or that there was not negligence, unskilfulness, or fault on the part of the schooner White Cloud, her officers or crew.

Wherefore these appellants pray that the said decree and each and every part thereof may be reversed with costs, and that the said libel of the said Coyne may be dismissed, and that the said appellants may have such decree and such relief in the said Supreme Court as upon the pleadings and proofs in the said cause they are entitled to.

JAMES R. BENTLEY,
JESSE HOYT,
CHARLES CLARK, *Appellants.*

DOUGLASS & ANDREWS, *Proctors for Appellants.*
GEO. B. HIBBARD, *Proctor and Advocate for Appellants.*

I hereby allow the within appeal.

N. H. SWAYNE,
Associate Justice Sup. Court U. S.

Filed in clerk's office Nov. 28, 1864.

JNO. WINDER, *D'y Clerk.*

233 UNITED STATES OF AMERICA, *ss:*

To Hugh Coyne, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday of December next, pursuant to an appeal from a decree of the circuit court of the United States for the eastern district of Michigan, wherein James R. Bentley, Jesse Hoyt, and Charles Clark are claimants and appellants, and you, the said Hugh Coyne, are appellee, to show cause, if any, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States, this 16th day of November, in the year of our Lord eighteen hundred and sixty-four.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

234 EASTERN DISTRICT OF MICHIGAN, *ss:*

Augustus S. Johnson, of said district, being duly sworn, deposeth and saith that on the 28th day of November, 1864, he served the within citation on the within-named Hugh Coyne by delivering to him personally, at the city of Detroit, in said district, a true copy of said citation, and at the same time showing to him this original; and that on the same day he likewise served said citation on the law firm of Newberry & Pond by delivering to John S. Newberry, one of said firm, personally, a true copy of said citation, and at the same time showing to him this original. One line interlined and one word erased before signing.

AUGUSTUS S. JOHNSON.

Sworn and subscribed to this 28th day of November, A. D. 1864, before me.

J. H. A. S. CULLEN,
U. S. Commissioner for the Eastern District of Michigan.

Filed in open court Nov. 28, 1864.

WM. D. WILKINS, *Clerk.*

235 Know all men by these presents that we, William L. P. Little, of East Saginaw, Mich., and Edward Kauter, of Detroit, are held and firmly bound unto Hugh Coyne, of Detroit, Michigan, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Hugh Coyne, or to his certain attorney, heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with our seals, dated the 16th day of November, one thousand eight hundred and sixty-four.

The condition of this obligation is such that whereas lately at a hearing in a suit depending in the circuit court of the United States for the seventh circuit and eastern district of Michigan, in which suit said Hugh Coyne was libellant, and James R. Bentley, Jesse Hoyt, and Charles Clark were claimants of the barque Newsboy, libelled in said suit, a decree was by said court rendered in favor of said Hugh Coyne and against the said Bentley, Hoyt, and Clark, claimants as aforesaid; and whereas the said James R. Bentley, Jesse Hoyt, and Charles Clark have prosecuted an appeal to the Supreme Court of the United States to reverse the said decree:

Now the condition of this obligation is such that if the said James R. Bentley, Jesse Hoyt, and Charles Clark, the said appellants, shall prosecute their said appeal to effect, and shall answer all damages and costs if they fail

such testimony as might be offered in relation thereto by either party, and to report the amount proved to said district court, as by reference to said decree will appear. Under said decree a reference was had to said commissioner, who reported that there was due from the said barque Newsboy, her owners or claimants, to the said libellant, for damages sustained on account of the collision aforesaid, the sum of five thousand one hundred and thirty-four dollars and 55 cents, with interest thereon from the 12th day of November, 1862, to the date of entry of final decree in said cause; which report was on the 12th day of May, 1864, confirmed by the final decree of said court, which decreed that the total amount then due as aforesaid to said libellant was the sum of five thousand six hundred seventy-three dollars and 66 cents, and the costs of said suit.

231 The above-named appellants, James R. Bentley, Jesse Hoyt, and Charles Clark, thereupon appealed from said decree to the circuit court of the United States for the seventh circuit and eastern district of Michigan, and such proceedings were thereupon had that said cause was on the 16th day of November, 1864, heard in said circuit court, and the said circuit court, by a final decree then made in said cause, in all things affirmed the said decree of said district court; and a final decree was made and rendered in said circuit court in favor of said Coyne and against said appellants for the sum of six thousand two hundred and fifty-three dollars and forty-one cents damages and his costs.

And these appellants are advised and insist that the said decree of said circuit court is erroneous in each and all its parts and particulars, and in the fact that the said Hugh Coyne was not entitled to any of the relief decreed to him by the said decree. And these appellants, therefore, in open session of the said circuit court, and at the same term and session thereof at which said decree of said circuit court was rendered and made, appeal to the Supreme Court of the United States from the whole of said decree, and from each and every part thereof, and from each part thereof which decrees that the libel of said Hugh Coyne be sustained or that he should recover any sum or damages, and from each and all parts of said decree by which it is adjudged or decreed that the said appellants, or their surety or sureties, stipulator or stipulators, bondsman or bondsmen, or proctors shall pay any sum or

232 sums or costs, and from each and all parts of said decree which decrees or adjudges that there was any negligence, unskilfulness, or fault upon the part of the said barque Newsboy, or any of her officers or crew, or that there was not negligence, unskilfulness, or fault on the part of the schooner White Cloud, her officers or crew.

Wherefore these appellants pray that the said decree and each and every part thereof may be reversed with costs, and that the said libel of the said Coyne may be dismissed, and that the said appellants may have such decree and such relief in the said Supreme Court as upon the pleadings and proofs in the said cause they are entitled to.

JAMES R. BENTLEY,
JESSE HOYT,
CHARLES CLARK, *Appellants.*

DOUGLASS & ANDREWS, *Proctors for Appellants.*
GEO. B. HIBBARD, *Proctor and Advocate for Appellants.*

I hereby allow the within appeal.

N. H. SWAYNE,
Associate Justice Sup. Court U. S.

Filed in clerk's office Nov. 28, 1864.

JNO. WINDER, *D'y Clerk.*

233 UNITED STATES OF AMERICA, *ss:*

To Hugh Coyne, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday of December next, pursuant to an appeal from a decree of the circuit court of the United States for the eastern district of Michigan, wherein James R. Bentley, Jesse Hoyt, and Charles Clark are claimants and appellants, and you, the said Hugh Coyne, are appellee, to show cause, if any, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States, this 16th day of November, in the year of our Lord eighteen hundred and sixty-four.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

234 EASTERN DISTRICT OF MICHIGAN, *ss:*

Augustus S. Johnson, of said district, being duly sworn, deposeth and saith that on the 28th day of November, 1864, he served the within citation on the within-named Hugh Coyne by delivering to him personally, at the city of Detroit, in said district, a true copy of said citation, and at the same time showing to him this original; and that on the same day he likewise served said citation on the law firm of Newberry & Pond by delivering to John S. Newberry, one of said firm, personally, a true copy of said citation, and at the same time showing to him this original. One line interlined and one word erased before signing.

AUGUSTUS S. JOHNSON.

Sworn and subscribed to this 28th day of November, A. D. 1864, before me.

J. H. A. S. CULLEN,
U. S. Commissioner for the Eastern District of Michigan.

Filed in open court Nov. 28, 1864.

WM. D. WILKINS, *Clerk.*

235 Know all men by these presents that we, William L. P. Little, of East Saginaw, Mich., and Edward Kauter, of Detroit, are held and firmly bound unto Hugh Coyne, of Detroit, Michigan, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Hugh Coyne, or to his certain attorney, heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with our seals, dated the 16th day of November, one thousand eight hundred and sixty-four.

The condition of this obligation is such that whereas lately at a hearing in a suit depending in the circuit court of the United States for the seventh circuit and eastern district of Michigan, in which suit said Hugh Coyne was libellant, and James R. Bentley, Jesse Hoyt, and Charles Clark were claimants of the barque Newsboy, libelled in said suit, a decree was by said court rendered in favor of said Hugh Coyne and against the said Bentley, Hoyt, and Clark, claimants as aforesaid; and whereas the said James R. Bentley, Jesse Hoyt, and Charles Clark have prosecuted an appeal to the Supreme Court of the United States to reverse the said decree:

Now the condition of this obligation is such that if the said James R. Bentley, Jesse Hoyt, and Charles Clark, the said appellants, shall prosecute their said appeal to effect, and shall answer all damages and costs if they fail

to make their appeal good, then this obligation shall be void; otherwise, to remain in full force and virtue.

W. L. P. LITTLE. [SEAL.]
EDWARD KAUTER. [SEAL.]

236 EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 18th day of November, 1864, before me, appeared personally William L. P. Little, of East Saginaw, in said district, and made oath that he is worth the sum of ten thousand dollars after payment of his just debts, in real estate subject to execution within said district.

W. L. P. LITTLE.

Sworn and subscribed before me this 18th day of November, 1864.

WM. L. WEBBER,
U. S. Com'r for the Eastern Dist. of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Personally appeared Edward Kauter, of Detroit, and made oath that he is worth the sum of ten thousand dollars after payment of his just debts, in real estate subject to execution in said district.

JNO. WINDER,
U. S. Commissioner for the Eastern District of Michigan.

I approve the within bond.

N. H. SWAYNE, *Asso. Jus. S. C. U. S.*

Filed in clerk's office Nov. 28, 1864.

JNO. WINDER, *D'y Clerk.*

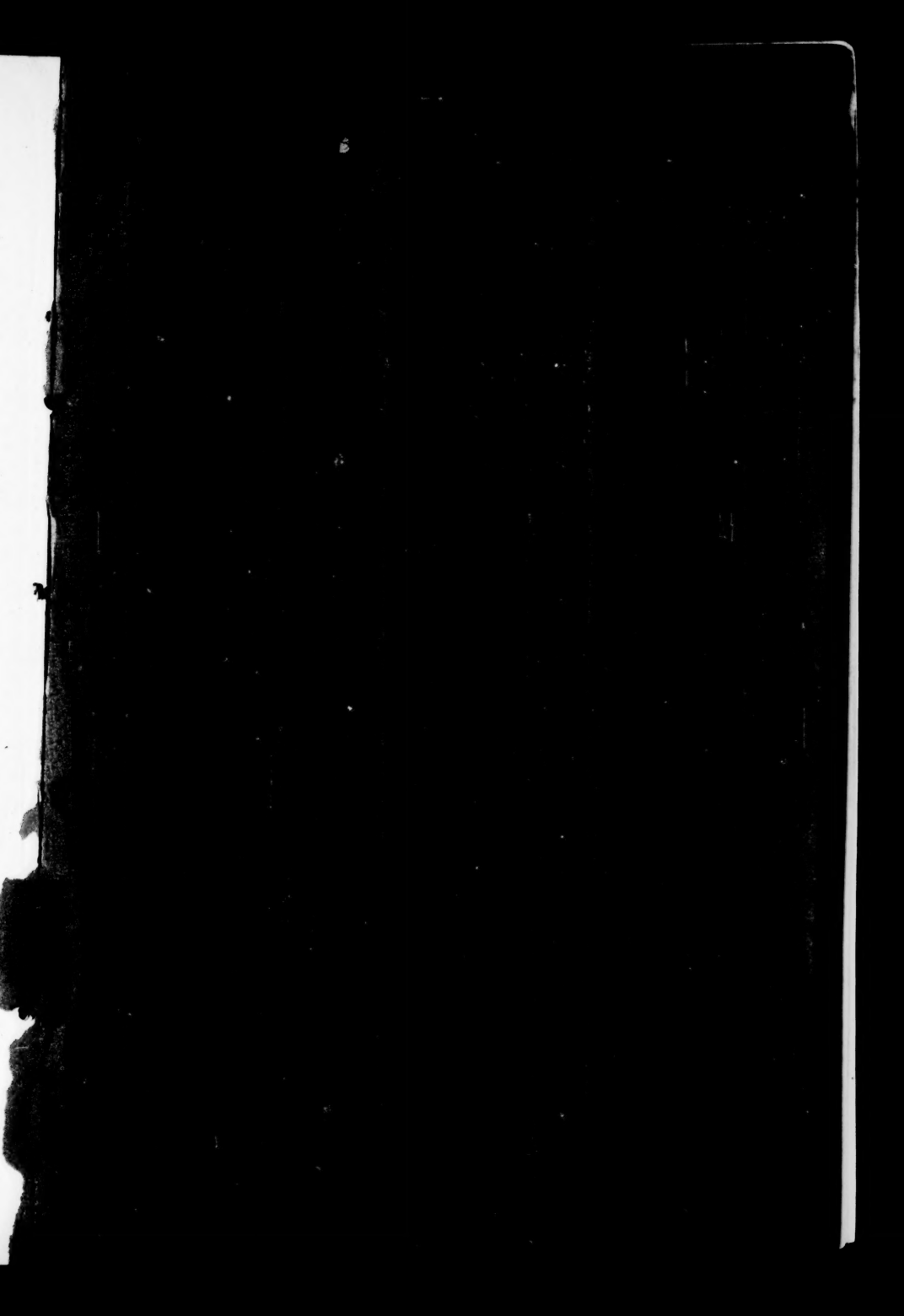
237 CIRCUIT COURT OF THE UNITED STATES
For the Seventh Circuit and Eastern District of Michigan, ss:

I, William D. Wilkins, clerk of said court, do hereby certify the above and foregoing to be a true transcript of the record and proceedings of said court in the cause therein entitled, and of the proofs filed therein, and that the petition on appeal, citation on appeal, appeal bond, and bond for costs appended to said record are the original documents filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this twenty-eighth day of December, anno Domini eighteen hundred and sixty-four.

WM. D. WILKINS,
Clerk U. S. Circuit Court, East. Dist. of Mich'n.

Filed December 31, 1864.



SUPREME COURT OF THE UNITED STATES.

Nos. 149 and 150.

James R. Bentley, and others, Appellants,
vs.
Hugh Coyne, owner of the Schooner White Cloud.

James R. Bentley, and others, Appellants,
vs.
Hugh Coyne, owner of the Schooner White Cloud.

Appeals from Decrees of the Circuit Court for the Eastern District of Michigan, in cases of cross-libel in collision.

George B. Hibbard, *of Buffalo, N. Y., for Appellants.*

These causes are on appeal from the decrees of the Circuit Court of the United States for the Eastern District of Michigan, in cases of cross-libel in collision; and as the leading points are the same in both cases, and arise upon the same proofs, will be presented together.

The appeals were brought and the cases are presented in full recognition of the rule, that this Court, upon any question arising as to mere preponderance of proof, or upon conflict of testimony, will not reverse the decree of a Circuit Court, (where that Court has really passed upon the questions in the case,) unless the error in the Court below be plain and apparent.

The Ship Marcellus, 1 Black, 414.

The appeals were brought, and the causes are now presented for the consideration of this Court, and a reversal of the decree of the Circuit Court is asked, First, For the reason that the error of the District Court, (for the case received no examination at Circuit,) is *plain and apparent* upon consideration of the leading facts in collision cases; and, Second, For the reason that these cases never received the actual examination of the Circuit Court, (testimony having been taken, as the records show, on the very day the decrees of the Circuit were entered, and which were entered without argument or examination of the cases by the Circuit Court,) so that in fact the rule recognized by this Court, that it will not reverse in ordinary cases of conflict of evidence, &c., has no application, and the appellants stand in this Court fully in their right to have their case heard and examined upon the proofs as they stand in the cases.

The cases are to be considered under the law with respect to the navigation of vessels, signal lights, &c., as it stood before the act of 1864, the collision having happened in 1862.

It is not the intention of the appellants to embarass this Court with minute consideration of the mass of evidence in the causes. It is their desire simply to call the attention of the Court to the leading facts in collision cases—those which virtually stand uncontradicted, and which are apparent from the testimony on the part of the respondents, and to claim

that it is apparent therefrom that the White Cloud changed her course when she should not have done so, (and did this in a mistake which the evidence of her crew discloses,) showed the wrong light; committed all the faults possible for her to commit, and the faults which caused the collision.

POINT FIRST.

The Law of the Cases.

Upon the questions of law in the cases there can be but little, if any, dispute.

I. It was the unquestionable duty of the White Cloud to show the proper light, and not to change her course.

The Steam Tug William Young, Olcott's R., 38.
St. John *vs.* Paine, 10 Howard, 584.
Newton *vs.* Stebbins, 10 Howard, 586.

As stating the rule in its proper strictness, and as showing a parallel case, and one wherein the vessel changing her course was held entirely in fault, the attention of the Court is especially invited to the case of

The Immaganda Sara Clasina, 7 Notes of Cases, 579, (English Admiralty R., Boston Ed., 579.)

II. If the White Cloud did change her course, or did not show the proper light, the *onus* of proof is upon her, to show that the collision did not happen from either of these causes; and the sole fault will be attributable to her, unless she shows the collision did not arise from either of these breaches of duty upon her part.

Waring *vs.* Clark, 5 Howard, 441, 460.
St. John *vs.* Paine, 10 Howard, 84.
Newton *vs.* Stebbins, 10 Howard, 586.
1 Parsons on Maritime Law, 191.
The Anglo Norman, Newberry, Ad. R., 492.

POINT SECOND.

The Facts in the Cases.

The indisputable and leading facts (far overriding all the mere and usual assertions of witnesses that the course was kept, and therefore the proper light was shown,) show that the White Cloud

1. Changed her course;
2. Showed the wrong lights; (and the evidence showing the one shows the other,) and that therefore she
3. Committed all the faults she could commit; and,
4. Under the rules already referred to, must be held to have caused the collision.

Admitted Facts.

The admitted facts are, That the collision happened upon Lake Michigan, in the evening of November 12, 1862.

That it was a good night for seeing lights, there being no fog on the water.

That the speed of the White Cloud was from six to seven miles an hour; and the speed of the Newsboy was about nine miles an hour; and of course, therefore, that the joint speed of the vessels was about fifteen miles an hour —a joint speed of about a mile in four minutes and of about twenty-two feet a second.

That the vessels saw each other's lights when they were some three miles apart.

It is indisputable, that the Newsboy, when she first made the White Cloud's light, was upon a course north northeast. (Fols. 85, 105, 123.)

That when the White Cloud's light was first seen from the Newsboy, it was a red light about two points off the Newsboy's port bow, (fols. 85, 106,) and

That she changed her course considerably to the eastward to avoid the collision; how much, and why the change was unavailing, will be subsequently shown.

White Cloud's Testimony, showing conclusively she changed her course.

The testimony on the part of the White Cloud shows she changed her course.

First. Her whole testimony as to her course is utterly unreliable.

She took the course and tack she claims to have been on till the collision, at about 4 o'clock, and

About three to four miles off Kewannee.

The Captain says so. (Fol. 64.)

The Mate says substantially the same thing. (Fol. 71.)

The Captain says the White Cloud had been on that course *and tack* all the time. (Fol. 56.)

This is corroborated by testimony of Captain Hale, of the Grey Eagle, as to the time the White Cloud took that course, and as to her distance from Kewannee. (Fol. 135.)

Yet the Captain and Mate, of the White Cloud, say

They headed south half east, that she was close by the wind all the time, *making one point leeway.*

The Captain says when the collision happened they were five or six miles off land. (Fol. 56.)

They also say they could see the land three or four miles off that night, and could see the land at the time of the collision. (Fol. 63.)

The Mate says they were three to six miles off land at the time of the collision. (Fol. 68.)

What does this testimony alone show?

If the White Cloud had kept that course from Kewannee, according to their own testimony, and taking their time and speed, and allowing a point for their leeway, which they prove they made, (fol. 65,) they would have been *nine and half miles from the nearest land! eighteen miles from Manitouwoc!!* (That light can only be seen eleven miles. See United States

Coast Survey, and the proof is that it only could be seen twelve miles, (fol. 96,)) and *eight miles in a northeast direction from the actual point of collision* established by the accurate departure taken by the second mate of the Newsboy, and their own estimate of the distance from land!!

Manitouwoc light (and they claim to have known the coast) would have been *six and a half points off their starboard bow*, instead of the one, one and one-half, and two, they say the light they thought was the Manitouwoc light, was, and they would have opened it fast.

What reliability can be placed on testimony like this as to courses?

All these things will appear on examination of any map of which the Court may take judicial notice, and from the illustrative diagrams filed with the Clerk, and to the details of which the attention of the Court is most earnestly invited.

Second. What was their testimony as to the bearing of the light, which they at first thought was the Manitouwoc light?

The Captain says it was one and one-half or two points on their starboard bow. (Fol. 56.)

This, he says, was about twenty minutes before the collision, (fol. 56,) and

Ten or fifteen minutes before the collision he had opened it half a point. (Fol. 62.)

The mate made the light one, one and one-half or two points on starboard bow. (Fol. 66.)

He made it fifteen or twenty minutes before the collision. (Fol. 66.)

He opened the light half a point as it approached. (Fol. 66.)

To have been opposite the actual point of collision, to have made the Manitouwoc light with that bearing, they would have been three miles inland, as any map or the diagrams will show!!

Must it not be concluded after testimony like this, which cannot be explained away, that they have not given the correct evidence as to their course?

Must this not be so when Captains Blane and Hale swear, as they do, that the White Cloud kept no such course? The course of Captain Hale's vessel, the Grey Eagle, was south by west half west. (Fol. 135.) The White Cloud was right after him for hours. (Fol. 135.) This, allowing for the one point leeway, (fol. 65,) would bring the White Cloud where the collision took place.

Third. Then again they mistook the light of the Newsboy for the Manitouwoc light. *Undoubtedly they did, and that was the actual cause of the collision; but what seamanship was that.*

And they did mistake it.

The Captain of the White Cloud swears so, (fol. 61,) and told the mate so. (Fol. 61.)

But he says, ten or fifteen minutes before the collision, he told the mate it was a vessel's light. (Fol. 61.)

Till then, he says, he thought it was Manitouwoc light. (Fol. 62.)

The mate contradicts the captain as to the length of time through which they thought it was Manitouwoc light; and of course the captain's mere estimate of time, like all other estimates of time in collision, is worthy of but little reliance when in any way contradicted.

He thought it was Manitouwoc light when he first saw it. (Fols. 66, 68.) *He first thought it was not Manitouwoc light*, he swears, *when he saw the torch light, which was a very short time before the collision.* (Fol. 69.)

The wheelsman of the White Cloud says, the captain of the White Cloud *said, he thought it was the Manitouwoc light after the collision.* (Fol. 76.)

The lookout says, they were talking about its being the Manitouwoc light on the White Cloud; and the mate came forward and told them so four or five minutes before the collision. (Fol. 82.)

How could men pretending to be seamen, or paying any attention to the navigation of their vessel believe this, when Manitouwoc light was a flash-light. (Fol. 96.)

For ten or fifteen minutes, in which time they would run more than a mile, they only opened it half a point, although they claim they were heading south half east, and they were going six miles an hour; and when the captain of the White Cloud, ten or fifteen minutes before the collision, says the light bore south by west of him about one and a-half points off his bow, when, if he told the truth about his course before, it should have been about six and a-half points off his bow, and he should have opened it rapidly.

Fourth. Above all, a map will show that Manitowoc light could not be seen in any such bearing by a vessel bound up the lake. As the vessel came along down the land as they say the White Cloud did, Manitowoc light would be hid by Twin River point till the light would bear at least four and a half points on the starboard bow.

As to all these things the attention of the Court is most earnestly invited to the submitted *diagrams, for all these considerations are based alone on the White Cloud's testimony;* nor are any of these conclusions affected by the testimony taken after the trial in the District Court. The testimony on the part of the White Cloud is predicated on an assumption of facts which did not exist, for the point of departure off Kewanee is assumed to be one mile instead of say three and a half, as it really was, (fols. 63, 64, 71;) while the testimony on the part of the White Cloud after the trial in the District Court (fols. 203, 215) confirms all these conclusions.

Fifth. What then is the cause of this collision as shown by their own testimony?

They say they wanted to keep along the land, and that was the natural thing for them to do.

The captain says so. (Fol. 61.)

They evidently thought that they did so when they give the distances they do at which they say the collision happened from the land. (Fols. 63, 64.)

They saw this light and mistook it for the Manitowac light.

Making it bearing as they say it did, if it had been the Manitowac light, they should have changed their course and kept away if they wanted to run along the land.

It was the common talk of officers and crew at the time, and all the time, that it was the Manitowoc light, (fols. 61, 62, 66, 68, 69, 76, 82,) and this would not have been so had they not been guiding their movements by it, keeping away for it.

Deceived, as they had deceived themselves by their ignorance and inattention, they did what they naturally would do, kept away, changed their course, and kept changing their course, opening the light only half a point in fifteen minutes as they thought, for the purpose of keeping along the land, when in fact they were actually following the light of the Newsboy all the time.

Collisions do not happen without some such cause, some mistake, or error, which leads men into dangerous position. There was mistake and

error enough on the White Cloud, as is above shown from their own testimony, which they cannot contradict, to have caused a dozen collisions.

White Cloud's testimony, shows she exhibited the wrong light.

The foregoing considerations relate entirely to the vessel's change of course. If the White Cloud thus changed her course undoubtedly for quite a considerable time, on their own showing, they must have had the wind abaft the beam and were showing a wrong light, for with the wind abaft the beam, they should have shown a white light.

9 Statutes at Large, 382.

To have had the collision happen within the distance from the land they specify—say four and a-half miles from land, (fols. 56, 62,) and near the spot where it must have happened according to the accurate departure taken by the second mate of the Newsboy, the White Cloud (as appears from the map and diagram,) must have run on a course about south by west. This is confirmed by the testimony of Captains Hale and Blane, as to the course she was on. She could sail within, say six points of the wind. That would bring the wind west by south, (exactly where it was proven to have been by all the testimony on the part of the Newsboy.) *As soon then as the White Cloud kept away from that south by west course,* (upon which her own testimony shows she must have been,) to any considerable extent, she had the wind abaft the beam, (where it was proven to have been by the Newsboy's testimony,) and was of course showing the wrong light.

White Cloud's own testimony, shows she committed all the faults she possibly could.

Accurate consideration of the White Cloud's own testimony, therefore, shows:

1. That she changed her course.
2. That she showed the wrong light.
3. That she committed all the faults she could commit.
4. That she caused the collision through the ignorance and mistake of her officers.

Newsboy's Testimony, as corroborating these views.

A consideration of the testimony, on the part of the Newsboy, corroborates all these views; and taken in connection with the White Cloud's testimony, shows the White Cloud yet the more guilty of the radical faults of changing her course and exhibiting the wrong light; and also shows that the Newsboy did all that could be done, placed as she was by the White Cloud's fault,—followed up as she was by the White Cloud.

The point of collision is accurately ascertained by the departure taken by the second mate.

At half past six Manitouwoc light bore west. Twin River light northwest half west. (Fol. 105.) This establishes, absolutely, that the point of departure was eight and three-fourth miles from Manitouwoc, and six from Twin Rivers. The Newsboy then was on a north northeast course, going at the rate of nine miles an hour, (changing it of course three points when the vessels were very close to each other,) until ten minutes before seven, when the collision happened. **(Fol. 114.)**

This, taking into consideration the Newsboy's speed, (and again the Court's attention is invited to the diagram) establishes the point of collision three miles north northeast of the point of departure. This brings the nearest land four and a-half miles off, *corresponding with the White Cloud's estimate as to distance from land.*)

This establishes the point of collision beyond any dispute.

It as forcibly, as it is possible, shows that the officers of the White Cloud did not know anything of the position of their vessel, or the course made from Kewannee. Manitouwoc light, any where near that point, to a vessel headed south half east, would have been seven points on their bow instead of from one to two, as they swear they thought it was.

The Newsboy ran along on her course, not opening the light on the approaching vessel, (see the whole testimony of the captain, second mate and wheelsman of the Newsboy,) and making that light at first about two points on her port bow.

Of this there can be no doubt.

The speed of the Newsboy being nine miles an hour, and that of the White Cloud six, to have presented this appearance *the White Cloud must have been keeping away* all the time after she was seen by the Newsboy, (and undoubtedly she did keep away before this, misled as she was by her mistake,) and must have so kept away until she had the wind much abaft the beam.

A reference to the submitted illustrative diagrams, will show this beyond controversy.

If the light was made from the Newsboy, three points on her port bow, (as it is claimed it was by the White Cloud from the protest,) she must have kept away still more to have reached the point of collision, and had the wind still further abaft the beam; (and here the attention of the Court is most particularly invited to the two protests in their exact language, not as they are misrepresented to be.)

A reference to the submitted diagrams will show, that assuming these to be the facts, the Newsboy's light would present the appearance it did from the White Cloud's deck.

It would open a little (as the White Cloud's witnesses swear it did a little, and no more,) (fols. 62, 66, 39,) and only a little on the White Cloud's starboard bow.

The White Cloud would have been keeping off from the supposed Manitouwoc light.

She would keep away precisely as *Captain Hale, who upon the Grey Eagle, was in the best position to see, and did see, most positively swears she did for some time before the collision.* (Fols. 135, 136.)

Is it possible to contradict testimony like this?

The vessels could come together at the angle (about sixty degrees between their sterns,) which the witnesses upon both sides swear they came together at, and at which they could not have come together unless the White Cloud did keep away.

The White Cloud, it is thus established by testimony, which cannot be shaken, on both sides, did thus keep away; and such evidence and the leading facts in collision cases, are never overborne by the simple naked assertions of witnesses that a vessel did not change her course. Such assertions are always made. They may be frequently mistakenly made, for the reason that whether a vessel has changed her course or not, a person on board can-

not determine without observation of the compass, or by some other special observation.

All the testimony shows the White Cloud exhibited the wrong light.

It is therefore the more strongly established that she showed the wrong light.

The wind was undoubtedly west by south. All the witnesses on the part of the Newsboy swear it was.

Captains Hale and Blane confirm their statements. (Fols. 135, 138.)

The courses which Captains Hale and Blane pursued with their vessels, show the wind must have been there. (Fols. 135, 138.)

None of the vessels could have got where they were, *nor could the White Cloud possibly have reached the point of collision unless the wind was west by south. It actually was not possible for her, a close-hauled vessel as they claim, to have reached the point where the collision happened unless the wind was west by south,* as a vessel can sail only within about six points of the wind.

The course of the Newsboy, after the collision, shows that after the collision the wind was there.

If the wind was there, and there can be no doubt about it, (for it was not physically possible for the White Cloud to have reached the point of collision unless this were so,) when the White Cloud kept away she must have been showing the wrong light.

White Cloud changed her course the wrong way, and should have luffed just before the collision if she changed her course at all.

The White Cloud was again in fault for not luffing when she saw the Newsboy by the light of her torch. To luff, was to take the side she was required to take, if the changed her course at all.

She saw the Newsboy (as the captain and mate of the White Cloud testify, fol. 57,) about three points off her lee bow, and swinging to starboard.

It was the worst thing she could do to change her course in that direction. She could have luffed and gone clear.

See the case of the Immaganda Sara Clasina, 1 Notes of Cases, 579, 5 Eng. Ad., 579.

The Newsboy was not in fault.

The Newsboy could not be in fault.

She dared not change her course to the westward. She saw the lying light of the White Cloud ahead, saying that that vessel was bound to her windward. To have changed her course in that direction, would have been to have disregarded that light.

She saw that she did not open the light, and therefore the vessel was crossing her bows. She dared not put her helm up until she saw the vessel, for to have done so would have been to have disregarded the indications of the light's unchanging bearing.

It is the case, always to occur when a vessel which should pursue her course, changes it—an approaching vessel does not know whither to turn to avoid her.

Nothing could be done but to show her the torch light, show the White Cloud her error, (*and she did not perceive her error until then, for her mate swears he thought the Newsboy's light was the Manitouwoc light until then,* (fol. 60,) and keep on her course. This she did, and it was all she could do.

The Court is most respectfully invited to read the second mate's evidence, (which the counsel for the White Cloud have not attempted to contradict,) *from fols.* 120 *to* 123, as exhibiting a striking indication of the position in which the Newsboy was placed by the White Cloud's errors.

No little computation of time, no little discrepancy (and there are plenty of these in the White Cloud's testimony) in a statement as to time or distance can be employed to assail these positions.

It must be remembered that the officers of the Newsboy were not deceived, not in error.

The officers of the White Cloud were. They were in the very error to make them commit their faults.

No question can be made as to the competency of the Newsboy's look out. The Newsboy saw the White Cloud at least ten minutes before the collision. (Fol. 106.) There is no dispute about this. In ten minutes the White Cloud would sail one mile, the Newsboy one mile and a-half. The White Cloud was then, at least, two and a half miles off when first seen, and there was no lack of look out therefore.

It is to be presumed that the officers of the Newsboy did their duty.

Not so as to the White Cloud's officers, mistaking the light for Manitouwoc light as they did, and actually doing, as they did, what that error would lead them to do.

In conclusion, therefore, it is once more claimed that an intelligent and careful scrutiny of the proofs in the cases, and a consideration of the leading facts, make it *plain and apparent* that the White Cloud committed two radical and important faults, substantially all she could commit, and the faults that led to the collision, that she,

1. Changed her course and ran across the bows of the Newsboy, and that this—the White Cloud's being close hauled—was a fatal fault; and
2. That she showed the wrong light, for if she did keep away, thereby having the wind free, she of course did show a wrong light.

That the change of course of the White Cloud was a most important fault there can be no question. It was the duty of the Newsboy to keep out of the way, if the White Cloud did keep her course. If the White Cloud did not keep her course, the Newsboy could not know where to go to avoid her, and could only act upon the assumption that she would keep her course. If these faults were the sole faults that produced the collision, (as the appellant's claim,) these decrees should be reversed; if they were only contributing faults, the damages should be apportioned.

GEORGE B. HIBBARD, *for the Appellants,*

Buffalo, N. Y.

NOTE I.—At the conclusion of the argument in the District Court, the advocate for the White Cloud for the first time suggested the idea that the captain of the Newsboy *at first*, saw some other light than that of the White Cloud, and afterwards saw the White Cloud's light, and supposed all the time the two lights were the same.

The idea, is of course a mere supposition, based upon nothing in the testimony, and opposed entirely to the direct testimony of all the officers and crew of the Newsboy, and of Captain Hale of the Grey Eagle, for these witnesses swear that the one light was kept in view all the time. An assumption of counsel so entirely without foundation certainly cannot override the whole body of testimony upon one side.

Beside, upon the evidence in the case upon either side, or both sides, *no vessel can be so placed that it would be possible for any man to make such a mistake.*

The captain of the White Cloud himself (testimony, fol. 56) swears the *Whaling* was on his *port* quarter, (away on the other side,) two miles off, and one and a half points abaft the beam.

The *Rivals* was (the captain of the White Cloud swears, fol. 56,) on his starboard quarter two or two and a half points and about half a mile off.

Holling, the captain of the *Rivals*, (see his deposition,) says he was right behind the White Cloud, and *three miles off*, and that the White Cloud was the only vessel to the windward of him.

Hale, (captain of the Grey Eagle, testimony fol. 136,) says at about the time of the collision he could make out three lights. One right astern of the White Cloud. One on her lee quarter, and one on her weather quarter. He thinks the Rivals was one of these vessels, and he thinks she was astern of the White cloud.

Blane, (captain of the Whaling, testimony fol. 138,) says at seven o'clock he was from half a mile to a mile astern of the White Cloud, and she was on his lee bow. The Rivals was to windward of him and ahead, but he did not notice her after he left Kewanee, which was between three and four o'clock.

This is all the testimony of any substance on these points, unless it be a deposition taken *ex parte*, without notice (which certainly should not have any weight in a case like this) and of which I have no copy here.

The captain of the White Cloud speaks of the Mary Ann Egan being on his port bow. There is no proof the Mary Ann Egan was there I think, and as he does not speak of the Grey Eagle he probably mistook her for the Mary Ann Egan.

It is perfectly impossible, in the first place to reconcile the foregoing utterly contradictory statements.

It is impossible, upon the testimony of the captain of the White Cloud, to so place any vessel that it would be possible such a mistake could occur.

An accurate consideration of the testimony placing the vessels at the distances and in the courses they were stated to be on in any portion of the testimony. (not placing them at random and without any reference to distance or bearing,) *will show that it would be impossible for any such mistake to have been made.*

For instance, placing the Whaling (the vessel most approaching a position where it would be possible for any such mistake to be made) in any position which *any* of the testimony would place her, (the testimony of the captain of the White Cloud would put her off on his *port* quarter two miles away,) and there would be no possibility of any such mistake.

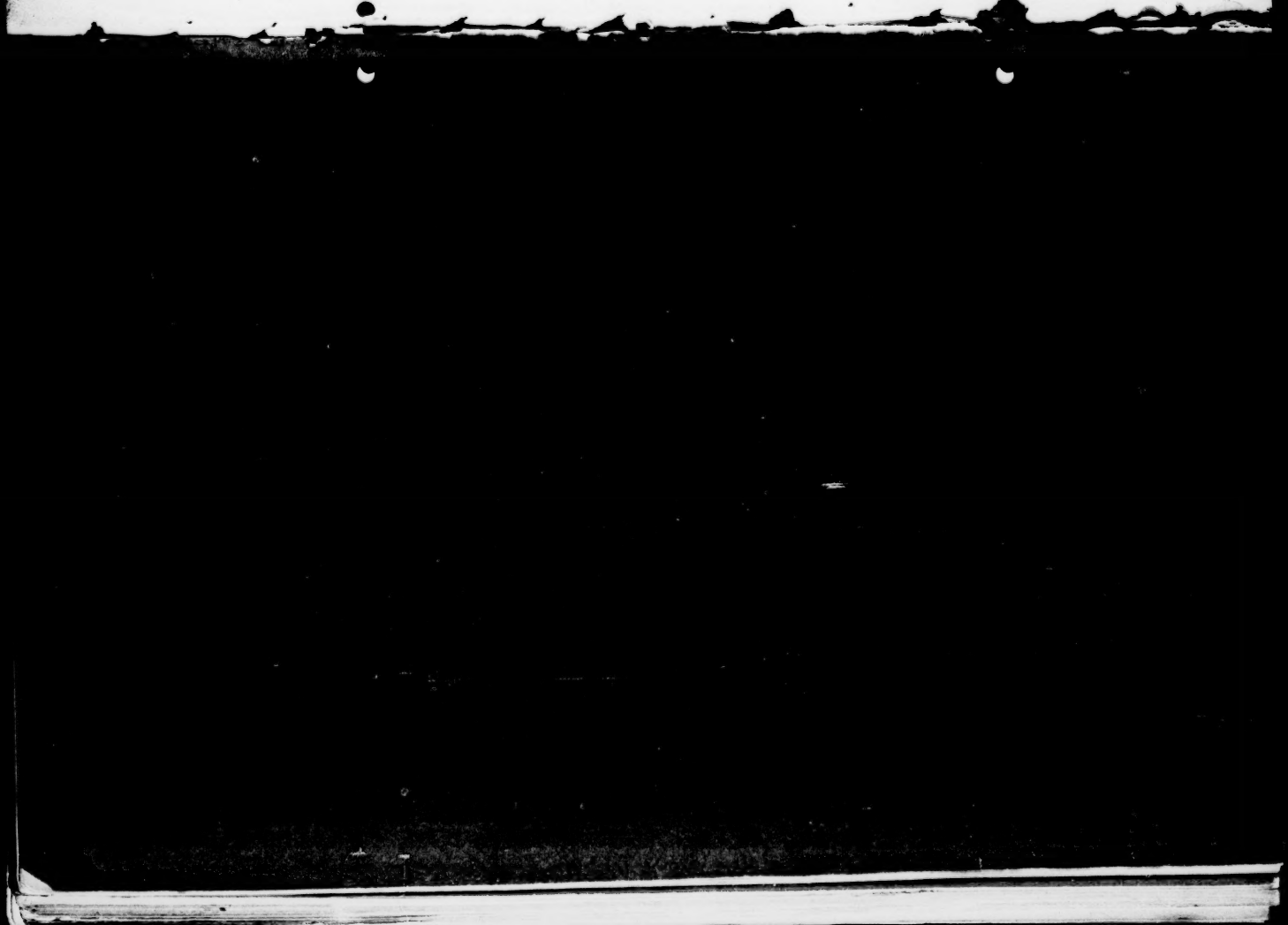
Beside her course was south by west to south by west half west. (Testimony fol. 138.) On this course her light would have opened to the Newsboy every moment, which the light of the White Cloud did not.

Again, it was claimed for the White Cloud that the Grey Eagle could not have crossed the track of the Newsboy so as to have enabled Captain Hale to see the White Cloud, he looking under the stern of the Newsboy, and see the White Cloud keeping away.

If the Court will allow the Grey Eagle to have been making as much leeway as the White Cloud (one point) and she undoubtedly did this, it will at once be seen that every thing would have appeared as it did to Captain Hale.

NOTE II.—The exception to the report of the commissioner should be allowed. (Fols. 154, 155.)

Navigation on the lakes closes on the 30th of November. (Fol. 150.) The White Cloud could not have performed a trip back to Chicago on that account. (Fols. 143, 144.) She therefore should have been allowed for detention only from twelve to eighteen days, (fols. 144, 149, 150,) the average would be fifteen days. Computing the detention at $80 a day, (as the commissioner did, fol. 147,) she should only be allowed for detention say $1200, and in any event there should be a deduction of say $800, besides interest made from the decree in the case in which the libel was filed against the Newsboy.



UNITED STATES SUPREME COURT.

COYNE, OWNER OF WHITE CLOUD, *vs.* NEWSBOY.

No. 149.

BENTLEY ET AL, OWNERS OF NEWSBOY, *vs.* WHITE CLOUD.

No. 150.

Supplemental Brief on part of Coyne and White Cloud.

JOHN S. NEWBERRY, *Advocate.*

1. In Mr. Hibbard's brief, page 1, he attempts to take these cases out of the stringent rule of this court, in relation to reversal of decrees where both courts below agree, laid down in the Marcellus, 1 Black 417. The Water Witch, 1 Black, 500, 501, and the still stronger and more rigid case of 3 Wallace, 267, 268, on the ground as he claims, that the cases have never received the examination of the judge of the circuit.

He admits that the cases were decided without argument before the circuit; which is a fact, and the decree of the circuit was therefore *practically a decree by consent.*

We submit that this shonld be a still stronger reason, why, not only the rule in the above cases should be enforced, but a more rigid rule still, if possible. It it is not so, then let it be understood that a party will stand as good, or, as counsel claims, a *better chance* of having a decree of the District Court reversed in collision cases, by *submitting* to an *affirmance* without argument in the circuit, and by taking an appeal to the Supreme Court. That practice will obtain at once, and counsel and the circuit will be relieved of the labor of a hearing in the circuit.

Again, this practice takes away all the powers of the circuit, and an appeal might as well be taken at once from the District to the Supreme Court.

It makes the Supreme Court the original forum for hearing appeals from the District in fact.

We submit in all such cases, the decrees below should be affirmed. 3d Wallace 267, is directly in point.

On page 3d of Mr. Hibbard's brief, is a heading, "Admitted Facts."

The three last paragraphs are *not* admitted facts. (a) Newsboy's course was *not* N. N. E. My brief, p. 16, Point VIII., is a demonstration to the contrary.

(b) The Newsboy did *not* first discover the White Cloud *two points* on the port bow. Their protest Record fol. 14½, and answers fol. 9, swear it was *three* points.

I call particular attention to this, because the whole theory of defendants requires this to be *two* points and not *three*. And see also my brief, p. 21, 22, 23, 24, where this change of theory is fastened upon them, and the false oaths by which they attempt to sustain it.

If the White Cloud was *three* points off Newsboy's bow, then every diagram on part of Newsboy is totally inapplicable, and yet their theory and diagrams are based on facts inconsistent with sworn protest and libel.

(c) He insists we changed our course *considerably* to avoid the collision. His Honor, Judge Wilkins, (see his opinion in my brief p. 5, fol. 12–18,) find as *fact* upon the testimony that White Cloud *did not change her course until the collision was inevitable, and then only to ease the blow, which was a wise and proper precaution*, see brief p. 13, 14, where the testimony to prove the correctness of that finding is fully collated.

Thus these *three* of his "admitted facts," are *not* admitted but absolutely disproved, by *their own testimony alone*, as well as more fully by *ours*. But his whole theory and fancy diagrams are hinged upon those so called "admitted facts," and, if they are disproved, or even *not admitted* (for he does not attempt to prove them,) the whole basis of the diagaams is taken way, and the theory of his defense fails.

On p. 3 of his brief he attacks our course.

Pages 10, 11, 12 13 of my brief collates *all the testimony* and show conclusively that Judge Wilkins' opinion is right.

In his diagrams he starts the White Cloud off Kewaunee, 3½ or 4 miles, quoting Captain Elsey, yet his own witness, Captain Hale, of Gray Eagle, fol. 137½, says he was one mile off Kewaunee, when *he* passed, and at dark, the White Cloud was directly astern of him, which proves conclusively that the White Cloud must have passed it at same distance, or come to same line before she tacked. But either of the estimations of distance may or may not be right; such estimates in collision cases are always variant, and no safe basis for a chart or diagram to overturn positive proof, and yet, just such estimates of *time* and *distance* are the whole basis of his "professional charts" and "diagrams."

Again in his diagram, &c., he makes no account of the local variation of compasses on every vessel, proven to be from

one-half to one point, by Newhall 198, Cramer 199½, 200, Bergh 202, Kirby 211, Goodrich 219½.

Nor does he make any account of the general variation of the compass, which, by all the proof, is about one-half point. Vlete, their own expert, fol. 215, says, the variation from true magnetic meridan is 5° 20′ west, just one half point. If he had considered these two last variations, as they are proven, they would have just counter-balanced his alleged error in course, by the lee way.

The lee way on his diagram he puts at one point, while his own testimony, Stanford 99½, Mason 116¼, puts it but one-half point. See my brief pages 10, 11, where the effects of these elements are discussed.

His charts and diagrams are simply perversions of testimony, putting in just what he can use, but leaving out the great mass of facts proven. They are well disposed of, by his Honor Judge Wilkins. Brief, page 4, fol. 6 to 11. See also on diagrams, Olcott 246, 251, 1 Newb. 21, where eminent admiralty judges give the true weight of such arguments.

Pages 4 and 5 of counsel's brief is devoted to the *mistake* we made as to the light of the Newsboy in supposing it Manitowac light.

Counsel turns and twists a simple statement to most unwarranted uses.

Thus p. 4, he says: "They mistook the light, *and that caused the collision*. This is simply an absurd *non sequitur*. The reading of the proof shows simply, (fol. 61, 62) that the master made the light, thought it Manitowac light, went to his compass, and then, and at least ten or fifteen minutes before collision, decided it a vessel. The captain at that time had charge of the vessel. So that it is immaterial whether any one else was mistaken or not.

But in the whole case, *there is not one word* of PROOF to show that *any change of course* was made, at that time or any other. The whole theory of counsel that White Cloud changed her course is the merest *assumption*, while the whole *proof* (see point III) including that of both captain and mate of their own vessel is that the White Cloud did *not* change.

So that the mistake of thinking the light seen to be a light house is of no moment, and is not worthy of consideration, if they cannot show by PROOF some corresponding mistake in navigation, *and that cannot be done*.

On page 8 of counsel's brief, in summing up the considerations to show that the White Cloud did change her course, he makes an italicised head note. That the "White Cloud changed her course the wrong way," &c.

And admits in effect that if she had changed her course *from* instead of *towards* the Newsboy, it would have been all right.

The whole gist of his argument is there, and if perchance he is mistaken his whole case fails.

Now counsel *have* made a most egregious blunder, for the White Cloud did *not* do what he says she did, but *did* do what he says she *ought* to have done.

To prove this he cites fol. 57, that testimony is, that the White Cloud opened the Newsboy's lights to about three points or so [at that time] off *starboard* bow. My brother says it was off *lee* bow. There is where he made a *bad* mistake. The *starboard* bow was the windward bow. The port is the *lee* bow. Thus it appears that at the instant of collision the White Cloud turned *from* and not *towards* the Newsboy, so that the point counsel there makes condemns himself in the highest degree.

But this whole doctrine is fully stated in my brief p. 13 Point IV and p. 16 Point VIII, and the doctrine in 12 How. 444, 461 and 21 How. 383, 384 is conclusive, that any change of course at such a moment is no fault.

On p. 9, counsel calls attention to his 2d mate's evidence, fol. 120 to 123. The shrewd counsel there puts several expert questions, which *assume* that our vessel was changing her course all the time. But we ask your Honors to note particularly, that at fol. 122¾ he says: "I had noticed *no change* in *course* of White Cloud until I showed torch light." And at 116¼ where he says *his* vessel *i. e.* Newsboy, *should have altered her course before he showed the torch light.* The pretence that our vessel had changed her course is the simple *pretence* of *counsel* not proven at all.

The counsel in asking a reversal of the decree below, is bound to make such a case as is required in 1 Black 417, do. 500, 3 Wal. 267–8.

He must "prove mistake in the court below." "Not enough to show that a different theory might be maintained, provided there is evidence enough to establish the decree rendered," etc., etc.

This he has not done. He has not attempted to point out one single error of the court below. Nor indeed has he even called attention to the opinion of the learned Judge below.

The finding of facts of that opinion (see my brief p. 2–6,) is unshaken in every particular.

We submit that both decrees below should be affirmed with interest and costs.

JOHN S. NEWBERY,
Advocate for White Cloud and Coyne her owner, Appellee.

IN ADMIRALTY.

SUPREME COURT

OF THE UNITED STATES.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

HUGH COYNE, Owner of Schooner WHITE CLOUD,
vs.
The Barque NEWSBOY.
} *Libel.*

BENTLY, et al., Owner of NEWSBOY,
vs.
Schooner WHITE CLOUD.
} *Cross Libel.*

BRIEF ON PART OF COYNE AND "WHITE CLOUD."

JOHN S. NEWBERRY, Advocate.

DETROIT:
DAILY POST PRINTING AND BINDING ESTABLISHMENT.
1867.

Supreme Court of the United States.

IN ADMIRALTY.

On Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

HUGH COYNE, Owner of Schooner WHITE CLOUD,
vs.
The Barque NEWSBOY.
} *Libel.*

BENTLY et al., Owner of NEWSBOY,
vs.
Schooner WHITE CLOUD.
} *Cross Libel.*

Brief on Part of Coyne and "White Cloud."

JOHN S. NEWBERRY, Advocate.

On the 12th day of November, 1862, the schooner White Cloud was run into and badly damaged by the barque Newsboy. The collision occurred on west shore of Lake Michigan, near Manitowac.

Coyne, owner of White Cloud, filed his libel in the United States District Court for the Eastern District of Michigan, in May, 1863.

Bently filed cross libel in September, 1863.

The cases were tried together in the District Court. The most of the testimony was taken down by comr. in open court, as now printed in the record.

On May 12th, 1864, the libel of Coyne was sustained and decree for $5673.66 and costs in his favor.

Libel of Bently dismissed with costs. See

Record p. 60, 61.

Thereupon, Bently, owner of Newsboy, appealed to the Circuit Court from both decrees.

In November, 1864, the causes were brought to hearing and *both decrees affirmed* with interest and costs.

Record p. 82, 83.

Bently again appealed to this Court.

Before proceeding to the discussion of this case on the merits, we refer to a few from the many cases, to show under what circumstances courts will not reverse decrees below on questions of fact.

Buckley v. Gilmore, 12 Ohio, 75.

"We treat finding upon case fairly submitted with no less respect "than we would the finding of a jury, and we would not reverse the "finding upon a mere difference of opinion as to weight of evidence.

Tracey v. Sacket, 1 Ohio St. 58.

The Court "will not disturb decree resting upon facts, except in a very clear case. Differences of opinion as to weight of evidence not enough."

Gazley v. Huber, 3 Ohio St. 403.

Difference of opinion as to weights of evidence will not warrant a reversal of a decree. *The rule is too reasonable in itself, and too well established, to be brought in question.* It is not intended to give two trials as a matter of course. As much respect should be given to the finding of a court as to that of a jury. And a very clear case of error must be made out.

When it is admitted that the facts might have been estimated as counsel contend, it only makes a case of doubt.

The same rule has been clearly announced by several judges of this court, when hearing cases in their Circuits on appeal. I cite but a few of them.

Cushman v. Ryan, 1 Story, 96.

The appellant must show, beyond a reasonable doubt, that there has been a clear mistake or error in the Court below. Or that new evidence is offered that materially changes the aspect. And if new evidence is offered that might with reasonable care have been offered in the court below, it is treated of less value, and is open to the suspicion of being framed to meet the exigencies of the case.

1 Blatch. C. C. Rep. 217.

Same principle.

The Grafton, etc., 1 Blatch. C. C. R. 178.

Judge Nelson says: To warrant a reversal upon a mere question of fact, the preponderance of evidence should be of a decided character, such as would justify the granting of a new trial at common law, on the ground that verdict was against evidence.

This principle should govern this court in reviewing questions of fact determined by the District and Circuit Courts.

Pridgeon v. The Nabob, at Detroit, 1865, Swayne J. says: Such issue was before the District Judge. After full and careful investigation he held the tug solely to blame. The evidence, since taken, does not materially affect the case. I have no authority to reverse a decree on mere difference of opinion. It is only when there is no doubt an error has been committed that a reversal can be had. Decree affirmed.

In Swain v. Schooner Comet, at Cleveland, 1865, and Dustin v. Schooner Ferret, and Ward v. Stella, and other cases, he held substantially the same doctrine, affirming each case.

Upon the principles laid down by the Circuit Judges, sitting in the Circuit, this case would even be affirmed in the Circuit. How much more, therefore, in the Supreme Court.

Walsh v. Rogers, 13 How. 284.

As to appeal in collision cases this Court says: In such cases the oral examination of witnesses before the court with skilful cross-examination, is almost the only method of eliciting the truth. It may be done in the District Court, and sometimes in Circuit Court.

We are disposed to require that the appellant should be held to make out a pretty clear case of mistake in the court below, before a judgment should be reversed. Raising a doubt, not enough. An appeal, not a speculation of chances.

See also 11 How. 528; 4 Wheat. 99; 1 Story, 323.

The Marcellus, 1 Black, 417.

Parties ought not to expect us to reverse a decree merely by raising a *doubt*, &c. Presumptions are all against the appellant. He must prove mistake in court below. Not enough to show that a different theory might be maintained, provided there is sufficient evidence to establish the one rendered.

The Water Witch, 1 Black, 500.

When both courts below concurred in a question of fact, it is not for this Court to spend time in hearing argument, whether eleven on one side are to be believed, rather than ten on the other. The concurrent finding of two courts ought to satisfy the losing party.

3 Wallace, 267, 268.

Same doctrine as above, only stronger.

We now ask attention to the learned, carefully prepared opinion of Hon. Ross Wilkins, Judge of the District Court for Michigan.

Wilkins J.:

The collision occurred in this case off Kewaunee, in Lake Michigan, on the night of the 12th of November last. The White Cloud, with several other vessels in company, was making for Chicago. The Newsboy had left Milwaukee that morning a
with wheat. It was a cloudy night, da
light of a vessel. The speed of the W 4
of the Newsboy nine miles an hour. T
Cloud was southeast, and that of the 7
White Cloud was carrying a red light
some discrepancy in the proofs as to
captains agreeing, however, that it was a
these proofs imposes upon the Court an unusual amount of jury labor in ascertaining and fixing the facts. There being no controversy as to the law, the issue is simply one of fact. Both vessels were sail vessels, pursuing opposite directions, and traversing a common thoroughfare. There are a few familiar principles that are applicable to some of the facts in the case, and settle this issue: 2

1st. A sail vessel with the wind free must give way to a vessel close hauled.

2d. A vessel on the starboard tack must show a red light—and with the wind free, a white light.

3d. Any negligence or want of skill, producing an injury in a collision, entitles the injured vessel to remuneration.

4th. The vessel which neglects an ordinary and proper measure of precaution, must show that such neglect did not cause the collision. The onus is on the neglectful vessel.

5th. A competent look-out, properly stationed for unobstructed obser-
3 vation, is as necessary for sail as for steam vessels at night, and especially on vessels having the wind free.

The protracted trial, the mass of testimony, and the unreconcilable contradictions of the witnesses, have greatly perplexed the Court in its investigations, and this perplexity is only relieved by the consideration of the liberality with which the law permits appeals to the Circuit. The testimony having been reduced to writing by the Commissioners of the Court, gives every facility to both parties, neither of whom in this case, I am satisfied, will rest content with an adverse decree of the District Court.

4 As to the direction of the wind, in my mind the preponderance of the proofs makes it throughout the afternoon and up to the time of collision, south-west by west. Elsey, McAuley, Wright, Holling, Pallister, Sheffield and Garret clearly give it that direction, though it was baffling and varying at times throughout the afternoon, all agreeing, however, that the White Cloud was close hauled on the wind, and the wind south-west by west; and Elsey and his mate and wheelsman observing the compass and forming their judgment by it at the time.

The captain and crew of the Newsboy, and Hale and Bleam of the
5 Eagle, and Whalley, differ from the witnesses enumerated, but not so much as to change the preponderance.

And I must say I cannot rely upon captain Stanford's evidence. As a juror I could not do so.

A witness, so self-contradicted, and whose testimony was so confused, and of such complexion as to require in important particulars amendatory explanations, cannot constitute a safe basis for the judgment of the court, whatever might be his experience as a sailor.

6 I assume the fact then, as proved, that the wind was chiefly south-west by west.

The next important fact to determine is the course of the White Cloud.

A very plausible illustration of the views of the Proctor for the respondent is furnished the court in the charts presented.

Diagrams, charts, maps, collated and platted from testimony, are not like official surveys, based upon conceded certainty as to points of locality.

If the judgment and truth of the witness can be relied on as facts, then these documents accurately drawn, constitute conclusive argument, founded on fact, as to the proposition sought to be proved. But witnesses may be mistaken or under deception, and on the capricious topic of wind and sea easily misled.

"The wind bloweth where it listeth," and who can tell, "Whence it cometh or whither it goeth." And the troubled sea varies position and observation every moment. But to make the chart trustworthy, its basis
8 must be certain. The witness may be believed, but his judgment unreliable. The variation of a hair by wind or water, by a point or half a point, unsettles the conclusion and determines nothing. These professional charts then are but professional arguments, entitled to great respect, but the force of which mainly depends on the facts proven beyond all question. They

are not evidence, but illustrations; not fixed facts, but arguments depending upon fixed facts.

"*Punctos mutantur*," *et*
"*Nos mutamur in illis*."

They aid counsel and courts, but do not of themselves convince the judgment or demonstrate the truth. 9

The course of the White Cloud then is to be determined not by philosophical deduction inferred from the proofs, but by the preponderance of the testimony and the credibility of the witnesses at the place and at the time when the fact or incident occurred. A fact must be established by legal proof, before any satisfactory deduction can be made. One witness may swear to this point, another equally credible to a different one, and 10 others, as in this case, about this and about that; some may judge by the compass, some by the flag at the mast-head, and thus where there is no certainty, no map can fix the fact sought to be proved. The slightest variation will change lines and compass points, and afford nothing more than plausible hypotheses. But credible proofs and not conjectures must control and govern judicial actions. It is true that natural impossibilities must 11 shake confidence in human testimony, and lead to the discredit of a witness, but the evidence must be clear, that the facts testified and working such a result were of such objectionable character as the charts would prove.

By the preponderance of this evidence I am satisfied that the White Cloud, about six o'clock in the evening of the day of the collision, was below Twin River Point, heading by the compass, south half east, on the starboard tack, and close hauled by the wind; that she had been on that tack more than three hours, and carrying a red light; that she did not 12 change her course until a few moments before the colliding with the Newsboy, as then a collision seemed inevitable, and the helm was ordered hard up a starboard—in the language of the witness—"to ease off the blow and make it glancing." The movement was necessary, for by keeping her course at that perilous moment a severe and destructive collision was certain. Such a change of course was demanded by self-preservation, and was not a fault. Its necessity was caused by the mismanagement of the 13 other vessel. Where a mismanagement of one vessel leads another into peril, and induces an order causing a collision, the first vessel is to blame.

This important fact, conclusive of this issue, is established by the captain and crew of the White Cloud, and they are more reliable on the course and conduct of the White Cloud, than the nervous and confused captain of the Newsboy, and his mate, who noticed no change in the White 14 Cloud, until after the blazing torch light had impaired their vision. A witness, to be believed, must have power and opportunity to behold, and being so situated, is more to be relied on than one whose vision is interrupted or obscured.

If the White Cloud did not change her course until this period, she did not show a wrong light, and the change then being no fault, she can not be made responsible for the damages.

In her course she was close hauled to the wind. The Newsboy was free. The White Cloud was the privileged vessel. It was the duty of 15 the Newsboy to avoid her by whatever means that may be necessary, and if it appears that timely measures for this purpose were not taken by the free vessel, she will be held responsible. Whenever there is danger of collision, the free ship, *i. e.*, the vessel on the larboard tack, must give way at once, and not wait until a collision becomes inevitable. As soon as the vessel close-hauled is discovered from the decks of the vessel that is

free (and good seamanship and statutory precautions require competent
16 and vigilant lookouts to make such a discovery), the latter must immediately change her course so as to give a large berth to the former. The law tolerates no negligence that imperils the lives or the property of others. No doubt is entertained by the court as to the course of the White Cloud. She was on the starboard tack—close hauled by the wind. It was the duty
3 of the Newsboy to have noticed this course, and to have altered her own. Mason, her mate, so swears. "She should have altered it before the
17 exhibition of her torchlight;" and, he is sustained in this by Elsey, McAuley and Garret. But captain Stanford, at this crisis, when self-possession was so essential to safety, seemed to manifest as much confusion and hesitation, as a master, as he exhibited as a witness on the stand. He came on deck after supper; he saw a vessel's light to the windward; instead of attending to it, or changing his course immediately, he threw out a torch-light, as a caution to the approaching White Cloud, thus obscuring
418 his further observation, and, at the speed he was going, was soon down upon her; and then, when the collision was certain, he gave the order, for the first time, to luff. This was not good seamanship. But it furthermore appears, that the lookout of the Newsboy was not more than 17 years of age, and in the language of Captain Stanford, was but an ordinary seaman, and not experienced. When he made the light, the White Cloud was less than half a mile off, and of course within a few minutes of contact at their
19 united speed, and both he and his mate discovered it before the lookout, who should have been able to have reported the fact when the captain
5 reached the deck. It is in proof that it ought to have been seen at least three miles off. I consider this omission as proximately leading to the collision. A vessel seen at that distance could and should have been avoided. He is not a competent or an attentive lookout thus to suffer vessels to approach without making an immediate report to the officer on deck. The fact of not seeing the White Cloud under the circumstances,
20 proves the incompetency of the lookout. The rule is inexorable, there must be a sufficient lookout. The absence of such at the time of collision, is a
6 condemnatory fault, and, if the effect of such a salutary precaution contributes to the disaster, the guilty vessel must be responsible. In Whitridge & Dill, 23d Howard, the steward was the lookout, and deemed insufficient. Here the case is stronger. A mere boy—admitted by the captain and proved by the mate—incompetent. Was there no other reason to condemn the Newsboy, this is sufficient.

Decree in favor of White Cloud, &c.

Upon the hearing in the Circuit Court the counsel submitted to the affirmance of the decrees without argument. Practically it was a judgment by consent. It ought, we submit, to be a sufficient reason for the affirmance of the decrees here.

8

We claim, as proven on part of White Cloud, as follows:

On the afternoon of November 12, 1862, at about the hour of three o'clock, the White Cloud, in company with several other vessels, was proceeding toward Chicago, and was one or two miles off Kewaunee, in Lake Michigan, and at that time took a course "by the wind," close hauled on

starboard tack, steering south half east, varying a little as wind might have varied, but steering that general course, which, in relation to vessels she might meet, was a privileged course.

At about seven o'clock the fleet of six or seven vessels was off Twin River Point, all carrying red lights; by the wind, on same general course, and steering south half east, the wind being about south west by west.

The White Cloud was then a little ahead and on port bow of the schooner Whalley, and the Rivals ahead and on starboard bow of the Whalley, bringing the Rivals nearly abreast of the White Cloud.

The San Jacinto was astern of the White Cloud, and other vessels were in the same neighborhood. The Gray Eagle led the fleet by a mile or so.

While the White Cloud was so steering south half east on starboard tack, they made the lights of the Newsboy 1½ or 2 points on starboard bow, which for two or three minutes Capt. Elsey supposed to be Manitowoc lights. They kept their course. Capt. Elsey soon determined it a vessel; and as the vessels approached, the light of the Newsboy gradually opened on their starboard bow.

As the vessels came close together, the Newsboy suddenly showed her torchlight and put her helm hard-a-port, or hard-up, and came bearing down on the White Cloud, and struck her nearly amidship.

On part of the Newsboy we claim that it is proven that she, at the same time, was coming down the lake, heading to the northward and eastward, intending to steer N. N. E., but that no officer watched or saw the compass on the Newsboy after the White Cloud's light was made, and her officers admit that she "yawed" half points or more each way. Her course is uncertain, probably somewhere near N. N. E.

That the Newsboy had an incompetent and insufficient lookout. A mere boy, *not* an *able seaman*, and he not attending to his duties.

We claim that the testimony of Capt. Stanford, of the Newsboy, is utterly unreliable, and so far as this case is concerned, either from wilfull falsehood, or incapacity of memory, his evidence is unworthy of belief.

Judge Wilkins, after the fullest examination, has held his testimony entirely unreliable. See page 4 of this brief, fol. 5, 14, 17.

While the Newsboy was so proceeding, with all sail set, at a speed of nine miles an hour, her officers make a red light some *two* points as they *now* swear, and as they swore in Libel and Protest *three* points on their port bow, swearing also that they saw "*cabin lights in her port side.*"

That, although there were five other vessels in that immediate vicinity, which were easily seen from the White Cloud and from the Gray Eagle, a mile or so farther off than the Newsboy, yet neither the officers or lookout of the Newsboy saw either of the lights of the other vessels.

That as the Newsboy and White Cloud approached each other, the lights of the White Cloud kept about the same bearing, thus proving to those on the Newsboy that they were approaching on courses crossing, and both running to a common point, which they would reach at the same time, making a collision absolutely certain, if both kept on their courses.

That it was the duty of the White Cloud to keep her course, and of the Newsboy to take timely measures, by altering her course, to avoid the White Cloud.

That, notwithstanding this plain duty of the Newsboy, she kept her course without alteration until the collision was inevitable, and then put wheel hard-up, but *too late* to avoid a collision.

Diagram No. 1, ~~*see p. of brief*~~, *illustrates the course of the two vessels.*

We now proceed to *prove* from the testimony that our view of this case, above presented, is correct.

I. OUR VESSEL WAS WELL AND SUFFICIENTLY MANNED, PROVIDED AND EQUIPPED, AND ALL ITS OFFICERS AT THEIR APPROPRIATE PLACES. TWO LOOKOUTS ON DUTY FORWARD.

Although this was conceded below, we will refer to the testimony to show the experience of our officers and crew on duty.

His Honor, Judge Wilkins, saw them all, and from the least to the greatest we challenge the production of a better class of sailors, and in no particular was there or could there be fault found with them.

And in weighing their testimony, *that* is a matter to be taken into consideration, and it is no light matter, and was commented on by the Court below. See this Brief p. 5, fol. 13, 14.

Capt. ELSEY, fol. 54½, sailed 17 years, 9 years as master.

MCAULEY, mate, folio 66, sailed 24 years, 4 or 5 years mate. Has been master 7 or 8 years.

WRIGHT, wheelsman, fol. 73¾, sailed 15 years. Been second mate on the ocean 2 years; 3 years in the U. S. service; captain of maintop in "Wabash," a sixty gun frigate.

GARRETT, lookout, fol. 79½, sailed 4 or 5 seasons.

That record of seamen and their experience, we can rely on safely. The *mate* had been *master seven or eight years*, and the *wheelsman* had been *second mate two years*, and *captain of maintop in U. S. service.*

Their appearance on the stand, as good and reliable sailors and truth telling men, commended itself to his Honor, Judge Wilkins, at once, and counsel did not and could not attack them.

The White Cloud had two lookouts on duty.

ELSEY, 55¼. Two on lookout, Garret and Roberts. 64½. Stationed forward of windlass. 65. Did not see them away from that place.

MCAULEY, 66½. Two forward and myself on lookout. Light was reported by the lookout.

GARRETT, 79½ and 81. I was on lookout with Roberts, and made light, and sung out "light on the weather bow." I was forward with Roberts. Mate and Capt. walking deck. Mate replied, "I see it."

II. THE WIND WAS S. W. BY W. BAFFLING.

The Newsboy contends wind W. by S.

The White Cloud contends wind S. W. by W.

Here is a variation of only two points in the direction of the wind.

The demonstration which I read from the *Sailors' Epitome* shows that the difference between the true and apparent direction of the wind, between two vessels going in opposite directions, is 2¼ points.

Our proof as to the wind is *clear* and *positive*.

ELSEY, fol. 55½. Wind S. W. by W., little to westward sometimes. Fol. 57. Twenty minutes before collision wind S. W. by W. 58¾. After collision, wind S. W. a little west.

MCAULEY, 66½. Wind S. W. by W. WRIGHT, 74½. Same. GARRET, 79½. Wind forward of beam, we were by the wind close hauled. And it is proven that all the witnesses looked at compass, and determined it from that. They were on a vessel close hauled on the wind, and where they, of necessity, had to watch it, and they did.

In addition to this we have the testimony of

Capt. HOLLING, fol. 22¾ }
Mate POLLISTER, fol. 25 } See their depositions. They were the officers and crew of the Rivals, and swear knowingly and clearly—*wind S. W. by W.*
Sailor SHEFFIELD, fol. 26 }

Capt. SOPER, fol. 30½, master of the Marian Eagan, also swears wind S. W. by W.

Capt. REED, fol. 33¾, master of the San Jacinto, also puts the wind further south.

Here we have the testimony of five witnesses from vessels in the neighborhood, agreeing substantially with us.

But we add Capt. Stanford, although he swears in terms wind W. by S. yet he swears to other things that show he is mistaken.

STANFORD, 98¼, "noticed my fly after supper, it tailed three points forward of beam." If his vessel was at rest, that would be just as he swears wind W. by S. But we demonstrated that owing to his vessel going eight or *nine miles* an hour, it would make a difference of 2¼ points between the true and apparent direction of the wind. This correction being made makes the wind just as we say, within ¼ of a point, nearly S. W. by W.

STANFORD, 99½. After collision vessel came nearly *head to wind* heading to southward.

STANFORD, 103. After collision was aback heading S. W. by S., *very near to the wind.*

If Stanford swears to the truth, these two pieces of testimony strongly corroborate our testimony. On the other side, they claim, as proving the wind W. by S., the testimony of Stanford, who does so swear in terms, but we have analysed his testimony above.

MASON, 117, second mate. Wind W. by S., and yet, see his testimony, that he did not look at the compass after 6½ o'clock to determine wind.

ROUST, 123½, says: *I partly guess wind* W. by S. And ~~236~~ 126½: It might have been a point or two different.

These are from the crew of the Newsboy, and their testimony very unsatisfactory. There was nothing particular to call attention to the wind; and

STANFORD, fol. 101½, admits that a *vessel on a wind*, as the *White Cloud* was, can tell course of the wind *better* than *one* with a *free wind*, and explains why.

Capt. HALE, of Gray Eagle, 135¼, and Capt. BLEAM, of Whalley, 138½: They put wind W. by S., and put themselves steering a course which we shall show presently, would carry them miles inland. To show that Hale and Bleam were mistaken, we took the testimony of three most experienced sailors, to show that the course they said they steered would have run them directly ashore.

NEWHALL, fol. 195½, 196½, master 24 years, &c.: Sailing S. by W. half W. (as they swear) they would run ashore.

CRAMER, 199½, same.

BERGH, 201.

KIRBY, 210¾. Their own witness sent there to survey the ground, swears exactly the same. Thus convicting Hale and Bleam of falsity.

At any rate they are contradicted by the testimony of the captain, mate and one sailor from the Rivals; by the captain of the Marian Eagan, and the captain of the San Jacinto, and *four* from our crew.

The weight of evidence is clearly in *our favor* on this *point*. Having eleven witnesses, five being from other vessels, and two (see below) being government officers.

We may assume then that by the proof the wind was *S. W. by W.*

The following evidence was taken in the Circuit Court.

JACOB LAPS was correspondent of the Smithsonian Institute, seven years, at Manitowoc, taking and recording observations, fol. 187.

ABRAHAM ANDREWS was light house keeper at Manitowoc, since 1861, and he keeps a record by direction of the Light House Board, fol. 191.

Their testimony, in substance, is as follows: Observations were taken by one at 19 min. before 5, and the other at 9 P. M., on November 12, 1862, the evening of the collision. And the wind was there *S. W.* a light breeze.

Had there been any doubt before as to the wind, this would settle it entirely.

This evidence is from records kept at the time, and agrees substantially with that of our crew, who put the wind S. W. or S. W. by W., a little southerly. [See the depositions.]

Judge Wilkins, after full investigation, decided this point, as we claim. See his opinion in this Brief, p. 4, fol. 4, 6.

"I ASSUME THE FACT PROVEN, THAT THE WIND WAS CHIEFLY S. W. BY W."

III. THE COURSE OF THE WHITE CLOUD WAS S. ½ E., CLOSE HAULED ON STARBOARD TACK, UNTIL THE COLLISION WAS UNAVOIDABLE, WHEN HELM WAS PUT UP TO EASE THE BLOW.

We have no authoritative or government chart of Lake Michigan. It is difficult on a chart to lay down exactly the course of any vessel, as to the shore line, for the following reasons:

1. There is no government chart.

2. The general variation of the compass at that place was uncertain and unknown, varying, by the testimony, from 3 to 6 degrees.

3. There is a local variation on each vessel of from ½ to 1 point, *i. e.* from 5 to 11 degrees.

4. The lee way made by vessels on a wind is from ½ to 1 point, variable and uncertain. *Stanford 99½ Mason 116¼*

Now by taking all these uncertain elements of error in making a chart, it is easy to make a chart that will accommodate your case—or theory.

This was done with great ingenuity by opposing counsel below. He took all these uncertain elements and assumed them as proved, to suit his theory, and on that unsubstantial basis made his chart and attacked our course.

This fancy chart and diagram of counsel was fully disposed of by His Honor, Judge Wilkins (see this Brief, p. 4, fol. 6 to 11), as the learned Judge

well says: "The course of the White Cloud is to be determined not by philo-"sophical deductions inferred from the proof, but by preponderance of the "testimony and credibility of the witnesses. By this preponderance, the "*White Cloud was heading S. ½ E., on starboard tack close hauled, and so* "*had been for five hours, carrying red light.*"

I herewith present a chart enlarged by Capt. Thompson, of this port, of the best chart there is. also photographic copy of same

The point of collision is assumed to be just where the crew of the Newsboy put it. We know that the White Cloud ran, by her compass, S. ½ E. Running a line on that course to Kewaunee, we find that it passes about one mile outside of the pier.

But it may be said this makes no allowance for lee way or variation of compass.

VLETE, fol. 215, says: Looking South, variation is 5° 20′, West, ½ point.

MASON, 116¼: A vessel on a wind makes ½ point lee way.

These two just counterbalance each other. Thus a vessel heading, as ours was, by compass S. ½ East, is actually heading by true *Meridian due S.* If then she makes ½ point lee way, that makes her *actual progress through the water exactly S. ½ East.*

There is also a local variation of compass aboard every vessel. Kirby, 210: Sometimes as much as a point.

It is therefore an idle labor to undertake to base the whole theory of a defence, as our opponents do, upon professional charts based upon testimony, when there are so many elements of error.

The true way to determine the course in this case is as follows: We know nearly where the collision took place. We know nearly the place of departure of the White Cloud, with the other six or eight vessels in her company. Join the two points on the chart, apply the instruments, and see what the course is.

This we have done on the chart presented, and it gives us almost exactly the course we have proven, S. ½ E.

WHAT IS OUR COURSE BY COMPASS AS PROVEN BY TESTIMONY?

ELSEY, 55¾, 56½, 57: Steered S. ½ E, three hours on starboard tack, by the wind. All the others on same course. When I made light of Newsboy went to compass and found vessel heading S. ½ East.

ELSEY, 57½: When torch light showed, no alteration in our course; had been to compass just before.

ELSEY, 61, 62: That he looked at compass and asked man at wheel how she headed, who replied S. ½ E.

MCAULEY, 66¼: At 6 o'clock heading S. ½ E. by the wind, and kept her so. 67½: No change in our course up to time torch light shown. 70¾: Same. No order to man at wheel till then.

WRIGHT, 74½, wheelsman: Vessel heading S. ½ E., by the wind. No alteration until after torch light shown.

GARRETT, 79½, 80½: Our vessel by the wind, close hauled up to time I saw torch light vessel by the wind.

This is the clear, pointed testimony of our crew as to our course and our keeping it. *Where is the proof that shakes it in the least?*

But we have five other witnesses from three vessels in the same company, stating their own course and ours.

Capt. HOLLING, 22½, mate POLLISTER, 25¼, sailor SHEFFIELD, 26½, from schooner Rivals. They all swear they were steering S. half E., and were steering same course as the White Cloud.

Capt. SOPER, 30½, of schooner *Marian Eagan*, swears, he was steering S. half E. Same as White Cloud.

Capt. REED, 34¼, of schooner San Jacinto, swears he was steering a little to the eastward of the others, about one-half point. 35½. Could observe no change in course of White Cloud up to collision.

But we have more from their witnesses.

STANFORD, their captain, 94½, says, he saw no change in White Cloud's course, until after he showed the torchlight.

MASON, their mate, 122¾, saw no change in White Cloud, until torchlight shown.

In addition to this we have the testimony of four old and experienced masters, that the course we swear to is the true and usual course.

Capt. NEWHALL, 24 years master, 196 and 197½
Capt. CRAMER, 16 years an officer, 199 and 199¾
Capt. BERGH, 13 years an officer, 201, and
Capt. GOODRICH, 17 years sailor and owner, 219¾

} These four experienced sailors state substantially that the course is S. half East, but that compasses on different vessels vary from ¼ to 1 point. Goodrich even puts the course ½ point further east.

As to the course of the White Cloud we have four witnesses from the crew of the White Cloud.

Three witnesses from the schooner Rivals.

The captain of the schooner Marian Eagan.

The captain of the schooner San Jacinto.

Two witnesses from Newsboy, corroborating our own.

Four old and experienced sailors. They all substantially agree. *Fifteen in all.*

We may add, that the wind being S. W. by W. It is impossible that our vessel could have been steering any further to the westward, for we were *close* hauled.

To disprove our course, the only TESTIMONY they produce is that of

Capt. BLEAM, of schooner Whalley, 125. We steered S. by W. half W.

Capt. HALE, of Gray Eagle, 138½. We steered S. by W. half W.

We have proved, and Court below found, the wind to be S. W. by W., therefore it is impossible that they could have steered as they said they did.

But we show by testimony that they are mistaken.

Capt. NEWHALL, 196½. Steering S. by W. half W., &c., they would run ashore.

Capt. CRAMER, 199½, to same effect.

Our opponents, not satisfied with the crushingweight of our testimony, sent two engineers to survey the ground. Knowing that their two witnesses on whom they relied, must have sworn falsely as to their course, I asked their own witness the same question.

KIRBY, fol. 210¾. And he swears, that if they steered that course, they would have gone ashore.

I am warranted then, at the least, in saying that they were mistaken. Theirs is the only testimony impugning our course.

Counsel sought in the Court below to foist on to the Court certain charts and diagrams not founded on proof, but simply what his Honor, Judge Wilkins, designates as *professional charts* or arguments, and thus sought to

manufacture a sort of quasi evidence. But these are so thoroughly and happily disposed of by the judge, that it needs no further words of mine, to show they do not in the least shake our testimony as to the course of the White Cloud. See *ubi supra* Judge Wilkins' opinion, p. 4, fol. 6 to 11.

We claim therefore that our course is established beyond question, and as Judge Wilkins finds. See p. 5, fol. 11, 12.

> "*The White Cloud was heading by compass S. half E. on star-*
> "*board tack, close hauled by the wind, and so had been more than*
> "*three hours, carrying a red light. That she did not change her*
> "*course until a few moments before the collision, and when it was*
> "*inevitable, and then only to ease the blow, a necessary movement,*
> "*demanded by self-preservation, or necessity caused by mismanage-*
> "*ment of the other vessel.*"

Although incidentally I have referred to the testimony, yet to bring the point out clearly, I shall below collate the testimony to show that

IV. THE WHITE CLOUD ONLY CHANGED HER COURSE WHEN THE COLLISION WAS UNAVOIDABLE, AND RENDERED SO BY THE WRONG DOINGS OF THE NEWSBOY, *i. e.* BY KEEPING HER COURSE AND TAKING NO TIMELY MEANS TO AVOID THE WHITE CLOUD.

The Newsboy was proceeding with a free wind. The White Cloud close hauled on starboard tack. Ours was therefore the privileged course. We cite the testimony to show at what point the Newsboy first took measures to avoid the White Cloud.

STANFORD, their captain, 87, 100, ordered wheel hard-up, when 300 or 400 feet off.

MASON, mate, 108, two or three lengths off, or 250 or 350 feet.

SMITH, seaman, 133¾, two or three lengths off. And so they continued their course, although Stanford, 99, and Mason, 115, swear, as the vessels were running, they were approaching a common point, and there must be a collision unless he altered his course. And here I call attention to the condemnatory testimony of Mason, their own mate, from which there is no escape, fol. 115–116, where after much doubling and twisting he has to admit, that as the Newsboy was approaching the White Cloud on that night, GOOD SEAMANSHIP REQUIRED, AND IT WAS THE DUTY OF THE NEWSBOY TO HAVE ALTERED HER COURSE TO AVOID THE WHITE CLOUD BEFORE THE SHOWING OF THE TORCHLIGHT.

This is the *judgment of their second mate*, a good sailor, *right on the spot*, knowing all the circumstances. What answer can be made to it? None. He knew and *so swears*, and so does Capt. Stanford, fol. 99, from the bearing of the light, *they were approaching rapidly a common point*, and *would collide* if each kept on, and has to *admit*, although *wrung* out of him on *cross-examination*,—condemning his captain—that it was THE DUTY OF THE NEWSBOY TO ALTER HER COURSE.

He could not admit otherwise, for that is *the law*, and so I was determined he should, by his *own testimony, condemn his own vessel*. He is *uncontradicted*, and this point alone is sufficient to give us a decree for damages. There can be no escape from it. Judge Wilkins cites this very

evidence of their witness as conclusive on this point. See Brief *ubi supra*, page 6, fol. 17.

The fact then must be taken as established that the Newsboy kept her course until the collision was unavoidable. So Judge Wilkins finds as matter of fact. See Brief p. 5, fol. 12.

Elsey, 57½, so swears. McAuley, 67½, the same. Stanford, 99, to the same effect. Mason, 108¾–114¾, the same.

Now how far off where they when they changed course? I admit that estimates are unreliable, but they throw some light.

Elsey, 57½. Length or two off of us when wheel put hard up.

McAuley, 67¼. The Newsboy right on to us, when I heard order, "hard-up helm," about 200 *feet off*.

Garrett, 80¼, says: About twice her length off when wheel ordered hard up.

This is very close. Vessels approaching very rapidly, one 9 the other 6 or 7 miles an hour.

Now on the other side. Stanford, 100, says, 300 or 400 feet off. Mason, 108, 2 or 3 times her length. Smith, 133¾, two or three lengths off.

We are warranted then in assuming the vessels were from 150 to 400 feet off, and heading for a common point, and yet with the plain duty before her, the Newsboy had recklessly kept her course.

But there is one other test of the nearness of the vessels at the time each changed her course. The estimates give some idea. *Better* test is, what was done by the different actors.

The best test is, what was done by the persons who *changed* the courses themselves.

Roust, 126¾, wheelsman of Newsboy, had more than time to put wheel hard-over. Had it hard over, holding it.

Wright, 75¼, wheelsman of White Cloud, just as wheel was hard-up, collision occurred.

These witnesses do not estimate, but tell us just what was done on each vessel. They must have been close together, so much so, that the collision was inevitable, and the only result of change was to lessen the injury or produce a glancing blow.

The captain of White Cloud had a right to suppose that the Newsboy would take timely measures to avoid him, and seeing him within 200 feet, bearing down on him without change, he had a right to try and lessen the injury, and put his vessel where it would receive only a glancing blow.

And he succeeded and saved his vessel.

V. The White Cloud was carrying the proper Light, brightly burning; color Red.

In point II. we have proved the wind S.W. by W.

In point III. we demonstrate our course S. ½ E., and that we were close hauled on starboard tack. The proper signal light therefore is red. Without any further testimony, if wind is S. W. by W., and our course S. ½ E., it necessarily follows the light must be red.

Fol. 55½. The position and goodness of our light admitted. Elsey, 55¼. Carrying red light. Wright, 74½. Same. Garrett, 78½. Same.

But to show that we were carrying proper light, we show that the following vessels in our company were carrying red lights, and steering same general course.

ELSEY, fol. 56, MCAULEY, 68. Five other vessels in our company, all steering same general course, all carrying red lights, the Marian Eagan, Whalley, Blue Bell, Rival,—one name forgotten.

HOLLING, capt. of Rival, 22¼. Five or six vessels in my company, all on starboard tack, carrying red lights.

POLLISTER, 25. To same effect.

And here I may remark that, even on our opponent's theory of the wind, we were carrying a proper light; and so I compel their captain and mate to swear. See Stanford, 96; Mason, 114½.

Thus our course was S. ½ E., and they claim the wind to have been W. by S. That brings the wind ½ point forward of our beam, and our light a proper one.

So His Honor, Judge Wilkins, decided. *Ubi supra* p. 5, fol. 12.

VI. IT WAS THE DUTY OF THE NEWSBOY TO HAVE TAKEN TIMELY MEASURES TO HAVE AVOIDED THE WHITE CLOUD.

In the point IV. I have collated the testimony to show that the Newsboy did NOT take any measures to avoid the collision until within 200 or 300 feet. I have also referred to the strong testimony of their mate, Mason, fol. 115, 116, where he shows that *good seamanship required him* to *change* his course long before.

I cite this testimony to show that a competent expert and *their own officer on duty* condemns them. The law, however, is clear on this point.

The Newsboy had a fair wind, going off "large," or with a free wind on larboard tack.

The White Cloud was close hauled on *starboard tack*. 2 *Wm. Rob.*, 517. The *Gazelle*. Vessel on larboard tack must give way, and by "giving way" is meant, "*to get out of the way*" by whatever means necessary.

2 *Dods.* 85. *Woodrop Sims.* Vessel with wind free must get out of way of vessel close hauled.

2 *Wm. Rob.* 198. *The Traveller.* The Court say, "It is not necessary to enter into a *minute examination* of facts, because it is laid down if there is danger of collision, the *vessel on larboard tack must give way at once.*"

1 *Wm. Rob.* 87. Same rule.

10 *How.* 581–3. This Court say, "*If there is doubt*, the vessel on *larboard* tack must give way *at once.*

Blatch. & How. 351. Rebecca. Vessel running free must give way or bear the consequences of collision. See also Olcott, 138. Emily. Do. 198. Do. 313. 2 Wm. Rob. 65. 2 Curtiss, 368. Sprague, 221, 258. 18 Law. Rep. 678.

Judge Wilkins, *ubi supra*, p. 5, fol. 11, 12, in regard to this point, both on law and fact, condemns the Newsboy.

For this plain violation of good seamanship and duty, we ask, what excuse can be given? None can be found. But right here they allege as a fault on our vessel, our change of course when the collision was impending and unavoidable.

In reply we say:

VII. That if, on the alarm of sudden peril, caused by another vessel, wrongfully running so near as to endanger them, an injudicious order may have been given, it may be error, but not a fault.

Without conceding that the White Cloud's order was injudicious, we observe that the doctrine, above stated, is held in the following and many other cases.

12 *How. Sup. Ct.* 21 *How.* 382. The testimony shows that the vessel changed her course when one-third of a mile away, and this holds that such a change is in fact when the vessel is in *such peril*, that it is not a *fault*. 2 Hagg, ~~270~~ 176, The Shannon. 3 Hagg, 414, The Perth. Olcott, 249. 1 Gilpin, 587.

These cases are all to the same point. They fully absolve us from all fault, and would do so, if we had changed our course much sooner.

Judge Wilkins, after a full review of the facts of this case, holds, the order on the White Cloud was not wrong, and no fault can be imputed to her. See his opinion above, p. 5, fol. 12, 13.

VIII. The general course of the Newsboy was N. N. E., but she did not run that course steadily, but constantly varied from it uncertainly.

We shall merely collect the testimony of the crew of the Newsboy, showing exactly what they swore to, and their means of knowledge.

Roust, wheelsman, says, 123½. Course of our vessel was N. N. E.

Mason, second mate, 105¾. Our vessel on N. N. E. course.

117. When captain and I forward, *no one to watch the course of vessel.*

117. *My* attention and *captain's principally directed* to the *other* vessel. *Our vessel might have changed a point or two, and I not know it.*

118. *Might have changed* when torchlight burning.

Stanford, 85½. Course *given* to steer was N. N. E., but don't say she was *exactly on that course*, might "yaw" one-half point *either way*, might *yaw* further; and fol. 102½ repeats the same.

This, on *their* captain's statement, shows she was *steering no course*, but "*yawing*" around, altering her course *one-half points* or more each way, or *one point or more* in all.

Stanford, 95¼. During the whole time White Cloud in sight, *had not looked at compass*, and did *not take her bearings.*

99. While watching light, could not say my vessel *did not change her course or yaw.*

94¾. That *when torchlight burning* could *see nothing.*

We claim then that by their own testimony they were not running steadily on one course, but altered it at least one point. And further that by *not looking* at their *compass* while forward, and being unable to see while their torchlight was burning, they *cannot give* any *reliable* evidence as to *course* their *vessel* was going.

And at the very time their torchlight was burning, and *they could not see*, we have the evidence of *our crew* that she was *swinging towards our vessel*, and that, if she had *not so swung* towards us, *there would have been no collision.*

ELSEY, fol. 57¼. She showed torch, and then I could see her sails, and that she was *swinging toward us.*

MCAULEY, 67. Newsboy heading toward us when she showed torch, and *swinging to starboard.*

70. Newsboy *ranging to starboard* when torchlight shown.

These two men, thus looking at her, cannot be mistaken, and the capt. and mate of Newsboy cannot testify that their vessel was *not* swinging, but are compelled to admit she *might* have been swinging, and their *eyes being blinded* while torch was burning, they *could not see;* so the testimony of *our witnesses* must be believed, and it *accords* with *the other facts in the case.*

We then conclude that the *course* of the *Newsboy* was *uncertain* and *variable*, NOT *steady*, and *her own officers cannot* give her *course* with *certainty.*

If so, no reliable conclusion or theory can be based upon such uncertain proof, and tends further, if that were necessary, to *discredit* the chart and *diagram* on which they rely, for if, as their captain says, she varied one-half point each way from her course, then the straight line ran as in their diagram, does not represent her true course.

IX. THE NEWSBOY HAD NO SUFFICIENT AND PROPER LOOKOUT ATTENTIVE TO HIS DUTY.

STANFORD, 98. Had two boys on our vessel, one of them on lookout. "*Had no able seaman on lookout.*"

MASON, 111¾. I am *sure Capt.* and *I* made *light* to leeward before lookout. It was between *one-quarter and one-half mile* away. It was pretty close. It was a good light and *ought* to have been seen *three miles.*

112. There was no report of White Cloud's light.

112½. He admits, AS A SEAMAN, that for a *lookout* to allow vessels to approach in *that way is* NOT KEEPING A GOOD LOOKOUT.

Will your Honors for a moment consider this testimony of *their* own second *mate* on *duty* at the *time*, and ADMITTING that *his lookout* was INSUFFICIENT *and not* A GOOD ONE. Is not this enough to condemn them?

But we have more proof. It is in proof that in that immediate vicinity there were *five or six* other vessels, the *Rivals*, the *Marian Eagan*, *Whalley*, *San Jacinto*, and *Blue Bell;* that they were all carrying good red lights. It is further proven that Capt. Hale, fol. 137, of the Gray Eagle, a *mile further away* than the Newsboy, had *three* of *these lights* in *plain sight* all the time, and yet *neither* the incompetent *lookout* of the Newsboy or *any* of *her officers* or *crew* saw *either* of *these lights*, although at the time of collision they were within at least *one-half mile* of both the Rivals and Whalley, and San Jacinto.

This is *entirely unexplained* in the case. Counsel on argument below did not dare allude to it, and did not attempt any explanation of it.

There is the *great fact* staring them in the face. *The vessels were there, seen by other observers, and they did not see them.*

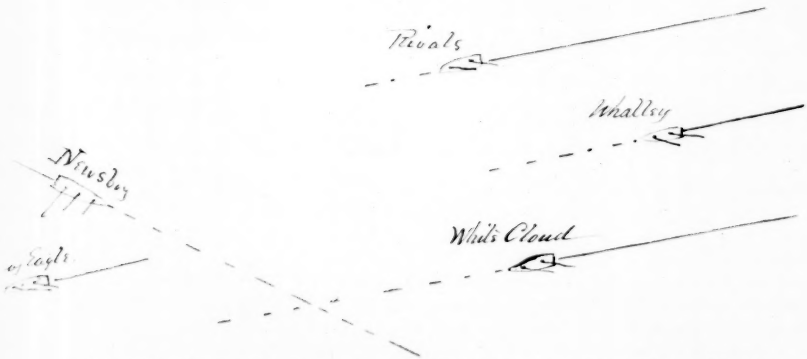
We thus have their incompetent *boy* lookout condemned by the second mate in terms, and by proving other vessels there, which were not seen, we still *further prove* the *insufficiency of their lookout.*

Judge Wilkins, in his evidence, discusses this testimony fully, and condemns the Newsboy in his opinion above, p. 6, fol. 18–20.

We herewith submit another view of this case, which from the beginning of this controversy has seemed to me to be the solution of the causes of this collision. It reconciles much that seems contradictory in this case, but in nowise relieves the Newsboy from the fault of the collision.

There were in the company of, and in the vicinity of, the White Cloud, some five or six other vessels. The crew of Newsboy claim to have seen only *one* of them. Before the torch light they saw one three points on port bow. Just before collision they saw what they supposed the same vessel almost under their bows. It will be clear, I think, from the testimony, that they saw *two* vessels, and not the same one *twice.*

Capt. Hale, of Gray Eagle, their witness, 135¼: Was 1½ miles ahead of White Cloud. 137, There were three lights astern—one right astern, one on lee and one on starboard quarter. *He* puts the White Cloud as the center vessel. But he is evidently mistaken, for Bleam, captain of Whalley, their next witness, 139, who was much nearer, says that *his*, the Whalley, was the center vessel—White Cloud to leeward ahead, and the Rivals was to windward and ahead. Diagram No. 1, ~~p. x~~, represents this, just as Bleam swears: *also this Sketch*



I am free to say there is great discrepancy as to the *names* of these vessels, but none as to the fact that these vessels occupied nearly these relative positions. In the night time, with nothing but lights to distinguish them, that would naturally be the case. Capts. Hale, Bleam and Elsey agree substantially that these vessels occupied those positions; they disagree as to names; but Bleam, their witness, and nearest to the other two, ought to know best, and I assume he is right, although it is immaterial what vessel may have been there. The material point is, these vessels had these relative positions. This diagram is simply given for better illustration of the evidence. Hale, of Gray Eagle, 1½ miles from these three vessels, saw their lights all the time. The careless and incompetent officers and look-out of Newsboy only saw *one* of these lights, and in their protest, fol. 14½, and an-

swer, fol. 9, say it was *three points* on port bow. If that is true, then they saw the *Rivals*, or the most *windward* vessel. But is there any excuse for a look-out *not* seeing the others. Now in that position they would see the "*cabin light* in *port* side" of Rivals, as her port side is toward them, fol. 15. They could see "she was heading to pass them to westward." So supposing, they showed a torch light, and while that was burning, as they swear, they could see nothing, it blinded their eyes. Putting out their torch, they find themselves right on to the White Cloud, then undoubtedly for the *first* time seen, exactly as she would be, if the positions are as sworn to by Bleam, their own witness. Had their boy look-out, or their captain, seen the light of either of these other vessels, there might be some doubt about this explanation. There is no word of *testimony*, nor did counsel below attempt any explanation of the fact that all these vessels were in that relative position, and yet no one on Newsboy saw them.

This fact alone, in the view of the Judge below, was sufficient to condemn them. See close of opinion, p. 6, fol. 20.

This look-out was "*a mere boy, admitted by the captain and proved by the mate, incompetent. Was there no other reason to condemn the Newsboy, this is sufficient.*"

In considering the positions and arguments of the learned counsel, and attempting to answer them, I am compelled to refer to the *oral* argument made in the court below, and discuss what he there termed *the great leading facts of the case.*

At that time he took great praise to himself that he did not discuss "whether a fly wagged its tail here or there, but only discussed *great leading facts.*"

1. *He presented a fancy unproven chart, with professional lines and courses, to overturn our positive proof as to the course.*

On the *argument* of the case he for the first time presented this fancy chart. He has *never* taken any *testimony* as to that chart, its lines or courses.

So far as the evidence in the case is concerned, it is a "fancy sketch," and one what his Honor, Judge Wilkins, calls "professional charts," or "arguments." p. 4, fol. 8.

I repeat here the elements of error that enter into the construction of such a chart, and which show that no chart of this kind can be relied upon to overturn positive testimony.

(1.) His chart is an unproven chart, as to the shore line or courses. There is no government chart published.

(2.) There is a general variation of the compass there of about one-half point. In laying down the course of White Cloud, he has made that variation the wrong way, making exactly one point difference.

(3.) There is a local variation of the compass on every vessel of from ¼ to 1 point.

(4.) The lee-way of a vessel is from ¼ to 1 point.

With these uncertain elements of error, varying them to suit the exigencies of counsel's argument, you can establish *any theory.*

But I say further, to produce any unproven chart as a basis for argument to overturn positive proof, is an unwarranted attempt to *foist* on the court a sort of *quasi evidence.* We denounced the courses laid down on

that chart as untrue on the trial below, and have since taken the testimony to prove them untrue. See testimony of Newhall, fol. 195; Cramer, 199; Bergh, 201; Kirby, 214;—in addition to the other evidence as to our course, in point III.

This testimony shows the proper and usual course from Kewaunee to Twin River to be S. ½ E. or S. by E., while this *fancy chart* claims that our course would carry us 8 or 12 miles from place of collision.

2. *Then we made a "grand, first, fatal mistake," in mistaking the light of the Newsboy for the Manitowac light when first discovered.*

One would suppose, from the manner of counsel, that by his astuteness, he discovered this alarming fact. Yet it is spread out in our protest.

But it seems idle to talk of this. It is an ordinary thing to mistake a star for a light, and vice versa.

The pertinent inquiry in such cases is, did such a mistake lead to any *corresponding mistake in the navigation of the vessel?* This I challenge counsel to show. There is not one item of proof to establish any error or even change in the navigation of the vessel.

This point is purely immaterial, and yet it is pushed forward by counsel as important, because there is really nothing else in the case—of such slight importance that the Judge below did not even allude to it.

The proof, in regard to this, is fols. 61, 62—that the master made light, watched it a moment, told mate he thought it Manitowac light, shortly afterwards that it was a vessel's light. There is no intimation that he altered the course of his vessel, or thought of so doing, nor was there need of it. If it was a light house, he was steering so as to pass it in safety; if a vessel, his duty was to keep his course.

3. *He presents a fancy diagram, representing the Newsboy steering a mathematically straight course, and the White Cloud, for a mile or two, running a very handsome perfect curve; changing her course not once, or twice, or thrice, but constantly, every foot or rod, and changing it every rod just so much, and no more.*

If at any time she changes a little faster or slower than his *fancy diagram*, she would cross the Newsboy's track ahead or astern of the Newsboy. In other words, change her heading, her course, her point of departure a little—let the Newsboy "yaw" a little more or less, as her captain swears she did, and the vessels go clear.

I refer to the testimony again, to show the utter falsity of such an absurd and curved course for one or two miles.

Elsey, 55, 57½, 65½; McAuley, 67½, 70¾; Wright, 75; Garret, 80½. These swear positively there was no change in the course of the White Cloud. Stanford, 94½, and Mason, 122½, the captain and mate of the Newsboy, swear *they* saw no change in the course of the White Cloud. Stanford, fol. 93½, and Mason, 114½, both swear they saw "cabin lights in her port side until torch light was shown," and to do that he must have been on her *port* side; and yet this *fancy diagram* presents the starboard side *all the time.*

In one word, there is no PROOF to show we *ran any such fancy, curving, erratic* course, and I believe that it is not in the bounds of possibility for a vessel to run any such course as that, if they had the most skillful sailor that ever trod a deck. It is an *absolute impossibility*, and yet by *this diagram, unsupported by* PROOF, they would have ALL the *testimony* in the case *entirely overturned.*

But this diagram was an entirely *new* theory of their case.

The facts on which it is based are entirely different from those sworn to in the protest and in the libel.

In those their theories and statement make the White Cloud off *three points* on port bow, see cabin lights in her port side, and she is heading so as to pass to the westward, going all clear, they seeing the White Cloud's *port* side *all the time*. In their *fancy diagram* they put the *White Cloud* on a course heading to the *eastward* of them, crossing their bows all the time, and in such a position that they *cannot see her port side at all*, but can only see her *starboard* side.

This change of theories required corresponding change of oaths on the part of the captain and other officers, and this they made, as I shall refer to hereafter.

This *fancy diagram* is founded entirely upon fiction, and has not one word of proof to sustain the course as laid down there for the White Cloud.

If, as they claim, *one* of the vessels must have run an erratic course, let us see which vessel is most likely to run such a course.

A careful reading of the testimony will show that the officers of the Newsboy had no oversight of the wheelsman of their vessel, and did not know, and from their position could not know, whether their vessel kept her course or not.

STANFORD, 97½. While White Cloud in sight did not *think to go to compass* until just as collision, that was *first* time. 95. During whole time that light in sight had *not looked* at *my compass*, did not *take her bearings* by compass at all.

MASON, 117. When captain and I forward no *officer* to *watch* the wheelsman or the course of our vessel. 117. *My* attention and *captain's* directed to the *other* vessel, *possible* our *vessel changed a point or so* and *I not noticed it*. 118. She *might have changed* when *torchlight was burning* and eyes blinded.

STANFORD, 85½ and 102¼, says, his course was N. N. E., but he can not swear *she was exactly on that course*, might "YAW" one-half point either way, *might yaw further*.

We say with no one to watch the wheelsman of the Newsboy, with no officer near a compass, with their vessel on *their own testimony* "*yawing*" one-half point or more either way, making one point in all, it is fair to conclude, that, if either vessel ran an eccentric course, it was the Newsboy and not the White Cloud.

See point III, where we prove our course steadily, without change, S. half E., and our officers at their appropriate places, and watching their compasses.

These considerations seem to me to be fatal to their *fancy diagram*. Their testimony as to their own course is very feeble, while ours is strong.

But counsel seeking for some motive for our *alleged* change of course, says: "The *idea* that we saw Manitowac light, led us to change our course." Then in his simple logic he asks, is it not likely we would change? and then adds, therefore, we did change.

But the simple answer is, we *did not*, and the PROOF shows WE DID NOT change our course from any such *idea*, or any other cause.

His Honor below, summing up all he said on the subject in reference to these *professional charts* and *fancy diagrams*, says: "The course of the "White Cloud then is to be determined not by philosophical deductions "inferred from the proof, but by the preponderance of the testimony," &c., &c. "No map can fix the point sought to be proved; the slightest varia-

"tion will change lines and compass points, and afford nothing more than "plausible hypotheses. But credible proofs and not conjecture must con- "trol and govern judicial action," &c. See *ubi supra*, p. 5, fol. 9–11.

He also sees fit to attempt to bolster up his case by praise of his own crew. I meet him there.

ROUST, 125 to 127, the wheelsman of the Newsboy. He was as stupid as a man could be; all he knows is he steered N. N. E. and kept his course, and to any question he answers, "I don't know," "I don't remember." Folio after folio of his testimony in cross-examination is just that.

MASON, second mate, 14½. In the protest he swears that he made the light of the White Cloud three points off port bow, and he and captain saw cabin lights in her port side, saw she was a fore and aft schooner, heading S. by W., &c.

Fol. 113 says, he does not recollect of so swearing.

113¼ says, he could *not* see she was a fore and aft vessel or tell her heading.

119¼. He swears, NO SAILS *carried away* by the collision.

119¾. On cross-examination he swears, everything forward carried away, sails and all.

122¾. *Head-sails* ALL GONE.

123. He swears that he does not know that he gave attention enough to protest to know whether true or not.

This shows how little regard he has to his oath. But he swears to other things of still more importance. If he is as good a sailor as counsel contend, then his testimony must be regarded.

Fol. 112½. He *has to admit* that *his lookout* was *incompetent*, that *he did* not keep *good lookout*.

Fol. 114¾ to 117. Upon a series of questions put on the management of his own vessel, he has to admit, that *it was the duty of the captain of his* vessel to change his course before he did.

Thus upon the testimony of their own mate the Newboy is condemned.

Capt. STANFORD. On the examination of this their main witness, His Honor announced, that his testimony was utterly unreliable. See Judge Wilkins' opinion, *ubi supra*, p. 4, fol. 5, "I cannot rely upon Stanford's testimony," &c., &c. "It cannot constitute a safe basis for the judgment of the court."

We refer only to a few instances to show that Judge Wilkins' conclusion is just.

His manner on the stand, his method of answering questions, his hesitations, quibbles, and all that, cannot be produced upon paper. His exceeding nervousness and excitability must unfit him for the command of a vessel in danger and peril, and his memory is so unreliable, and as he swears, his imagination so strong, that what he says must be considered to all intents and purposes *untrue*, as the Court below held.

His extraordinary statement about the protest, his contradictions and his change of mind, and absurd reasons he gives for it, show, at a glance, that his testimony is of no weight whatever. Thus

His protest, fol. 14½, states in effect, when he made lights of White Cloud, it was three points on his port bow. That he watched it, and that he and second mate could *see that it was a fore and aft vessel, heading S. by W. or S. by W. half W.*; that he *could see cabin lights in her port side.*

Now see how strangely he swears on the trial.

STANFORD, fol. 92½ *et seq.* "Have *said* and SWORN that I made lights

about THREE points on port bow, then I thought *that* was about the bearing; that was *three* days *after* the collision."

"I said a moment ago, I did not think it over TWO points,"

"I *also swore* that I and second mate could see *it was a fore and aft vessel*, heading *S. by W. or S. by W. half W.*"

"*Now* I do not think that could be true, my imagination was strong, "and afterwards my second mate told me, that he did not see it; THAT "CHANGED MY OPINION."

"And then in next sentence he says, "*my opinion is yet that I could see it*," "but I am *a little mixed*."

He gives as a reason for contradicting his sworn protest on such material points the statement of his second mate; a lame excuse, and yet he says right away that his *opinion is not changed after all.*

STANFORD, 94. I asked, "Did you not swear you saw cabin lights *in her port side?*" "I don't think I did." And yet his protest, fol. 14¾, shows that he did so say.

And, your Honors, he had a reason for so saying. *Then* their theory of this collision was that they could see our *port* side, and that we *suddenly* changed our course and ran across their bows, so that, as they state in their protest, just before collision they could see our *starboard* side and lights on our *starboard* side.

But on the trial, finding the theory untenable, they then produce their *fancy diagram*, which shows our *starboard* side *towards* them all the time; and if so, they *could not see* our *port* cabin lights.

Knowing that Stanford's reason for changing his oath, as given above, was untrue, I came to the same subject again.

STANFORD, fol. 96¼. Calling attention to his protest and his oath now, I asked him, "*When* did you *change your opinion?*"

See his remarkable answer, stamping him with *dishonesty*, and of *trying* to *lead* his *testimony* to *accommodate* the NEW theory of the case:

"I changed my opinion last summer, after the libel was filed, and I came to place the vessels—I found I had got her *too far to the windward.*"

For six months, then, he believed his statement in the protest, and when *after libel* filed, and he found he must make some clear statement of this collision, or when better instructed, he all at once found "*that he had placed the White Cloud too far to windward.*" *That* position would not *accommodate* the *new* theory, for if we were off *three* points, and he seeing our *port cabin lights, that* would *end* their *beautiful theory* of our running that elegant *curve* for a number of miles, for they saw our cabin lights on *port* side (see Mason, fol. 114,) until *torch light shown*, while their fancy sketch turns our *starboard* side towards them all the time.

Hence we have the *motive* for the change of oaths on the part of Stanford.

STANFORD, 104½, says: "*All crew* present when protest was made. I did not take majority of crew up there seven days afterwards."

104¾, to counsel, who tried by re-examination to put him on his guard, says: "I am *sure they were with me*;" and adds, "if they went afterwards, *I did not go with them.*"

Fol. 140, he comes forward to explain this false circumstantial statement as follows: "Part of crew signed and swore to protest, then I received a letter from my owners to take rest of the crew and have them sign and swear to protest, and I went with them."

His memory must be very feeble and weak, to swear as he did, having utterly forgotten the *facts of his last statement.*

Again, fol. 97¾. In the anxiety and peril of the collision, when he thought the White Cloud sinking, he stops and tells his steward to go to the clock and tell him the time; and he had just before gone to the compass to find how his vessel was heading, although he swears, fol. 98, that his compass would *not* tell him how she was heading. Under the circumstances this fact needs no comment.

There is much more in his testimony equally contradictory, equally damaging, but from remarks made on the trial, and the published opinion of Judge Wilkins, I deem it unnecessary to proceed.

Capt. Stanford's testimony must be *dismissed* from the case; and with it falls the *whole theory* of *their* case.

His failure to alter the course of his vessel is condemned utterly by his own second mate (fol. 116½), *standing by his side*, who has to admit that the *course* of the Newsboy should have been *changed long before it was*, fully admitting that the principles of law hereinbefore contended for, did apply to the Newsboy as she was approaching the White Cloud.

Considering, then, the testimony of the officers of the Newsboy and Stanford so unreliable, and both captain and mate away from their compasses, where they had no means of judging the course of *their* vessel or ours, their being blinded while their torch light was burning, so they could see nothing, their evidence must be deemed of little weight.

And yet it is on such testimony that they rely to sustain the theory of their fancy diagram for a successful defence to *our* action and for a decree in their favor.

Counsel also refer to the testimony of Capt. Hale, of the Grey Eagle, to show that the White Cloud changed her course after the Newsboy passed him. In relation to this, Hale swears (fol. 135) that the White Cloud was exactly astern of him, and he one mile or so in advance; that there were two other vessels whose lights he saw, one on his *starboard* quarter and one on his *larboard* quarter. Thus Hale puts the *middle* vessel of the *three* as the *White Cloud*, and says *she* (the middle vessel) *kept away* for a minute or so.

And *their next witness*, Capt. Bleam, puts this at rest entirely, and relieves us from any extended consideration of this matter. Bleam says (139) in substance, that his vessel, the *Whalley*, was the MIDDLE vessel, while the *Rivals* was to *windward* of him, and the *White Cloud* to *leeward* of the Whalley.

Now Bleam was nearer the vessels than Hale, and could tell better. It therefore follows, if *Hale* saw EITHER vessel *change*, it was the WHALLEY, and NOT the *White Cloud*. Of course it is easy enough to see that in the night, in a fleet of vessels, all carrying the same lights, no man can distinguish one from the other.

Again, by Hale's own testimony (fol. 137¾), the slightest alteration in his own course, would make the vessel astern appear to be falling off.

At any rate, this is very weak testimony to overturn the strong array of testimony on our side to show that we kept our course (see point III), particularly when by their own testimony they show that both Hale and Bleam were themselves steering an impossible course.

They both swear that they were steering S. by W. one-half W. Our opponents sent two surveyors up to survey the ground, and (fol. 211) Kirby, who made the fancy charts and maps, swears that if they steered as they swear they did, they would run ashore.

And again, counsel, as an excuse for Capt. Stanford's course, said in his oral argument:

"That the White Cloud dodged around in the lake so, ran such a wild course, that Stanford could do nothing but watch us and keep his course, and show us a torch light;" and he seriously puts expert questions to his second mate (see fols. 120, 121), on the supposition that we are violating all rules of navigation, altering our course as his fancy sketch shows, and gets the mate to say that under such circumstances they could do nothing but show a torch light, and keep their course.

I allude to this here to produce just the oath of Stanford and Mason on this point, pointedly contradicting the *theory* of counsel, and showing that the facts were exactly the reverse:

STANFORD, fol. 94½. *Up to time I lit torch saw no change* in COURSE of WHITE CLOUD.

MASON, fols. 114, 106¾. SAW NO CHANGE in White Cloud's before torch light was lit.

And while torch light burning both swear they could see nothing.

Their own oaths show they saw no change in our course, and yet counsel argues and *assumes* that our constant change puzzled them so they knew not what to do.

It shows the straits the defence must be put to when they seriously put forth such a baseless argument.

Again, he *assumed*, and without the citation of any proof, that we had changed our course as in their diagram, that we were running with a fair wind, and were coming down on him, to use his favorite expression, with a "burning lie in our mouth," by which in the vernacular he meant we were carrying a red light.

But we have shown our course S. ½ E., and the wind S. W. by W. This brings wind forward of our beam and our light right.

But I go further and show if the wind was even as they claim, W. by S., and we steering S. ½ E., that we still had wind forward of beam, and the red light was the proper light. All our witnesses so swear, and Mason, 114½, Stanford, 96: That the White Cloud had proper lights under just these circumstances, all the other vessels in our company, the Gray Eagle, the Whalley, the Marian Eagan, the San Jacinto, the Rivals, all carrying red lights, it cannot and is not claimed they are all wrong.

Their rhetorical flourish that we were coming "with a lie, &c." *i. e.* carrying a wrong light, melts away into the air when we produce the proof showing that their own officers swear we *were* carrying proper lights, and the same light that every other vessel in that neighborhood was.

I have thus substantially gone over counsel's oral argument.

He has discussed what he *calls* the *great leading facts* of this collision as follows:

1st. That we mistook the lights of the Newsboy for Manitowoc light, and this caused collision.

2nd. That our wrong estimates of our distance from land, both when at Kewaunee and off Twin River Point, are fatal to us, as shown by the fancy chart and diagram.

3rd. That our course, as *marked out on his chart*, is ridiculous and absurd, and would not bring us within miles of the place of the collision.

I deny that such are the great leading facts to be discussed in any collision case. They are mostly immaterial and of the slightest importance.

On the other hand, I have discussed and sought to establish by the proof as *leading facts*,

1st. That the White Cloud was properly equipped, and all her officers and crew in their appropriate places, with two lookouts on watch.

2nd. That the wind was S. W. by W., baffling.

3rd. That the course of the White Cloud was S. ½ E., close hauled on starboard tack.

4th. That the White Cloud only changed her course when collision was unavoidable, and made so by the wrong doings of the Newsboy.

5th. That the White Cloud was carrying a proper light, color red.

6th. It was the duty of the Newsboy to have taken timely measures to have avoided the White Cloud.

7th. That even if at the moment of collision the Capt. of the White Cloud gave an order to alter his course, it is no fault, as decided by the Courts, under the circumstances of the case.

8th. That the general course of the Newsboy was N. N. E., but she ran an uncertain and variable course, and that her officers were in such a position they could not tell whether she kept her course or not.

9th. That the Newsboy had no sufficient lookout attentive to his duty.

In conclusion I say, the facts, points, theories, weight of evidence, character and credibility of witnesses, were carefully and elaborately presented in the District Court, where, as was said by this Court in 13. How. 284, oral examination of witnesses and skillful cross-examination is almost the only method of eliciting truth. The judgment of the District Court was affirmed without opposition on the part of the Newsboy in the Circuit. The decision of the learned District Judge is herewith presented *ubi supra*. Its findings upon the facts are fully warranted, and will not be disturbed in this Court upon slight grounds, or upon the mere raising of a doubt. Clear and positive mistake must be shown. Much stronger should this rule be when it is considered that both the District and Circuit Courts coincide in judgment.

We ask, therefore, that the decrees of Coyne against the Newsboy, and of Bentley against the White Cloud, be affirmed, with interest and costs.

JOHN S. NEWBERRY,

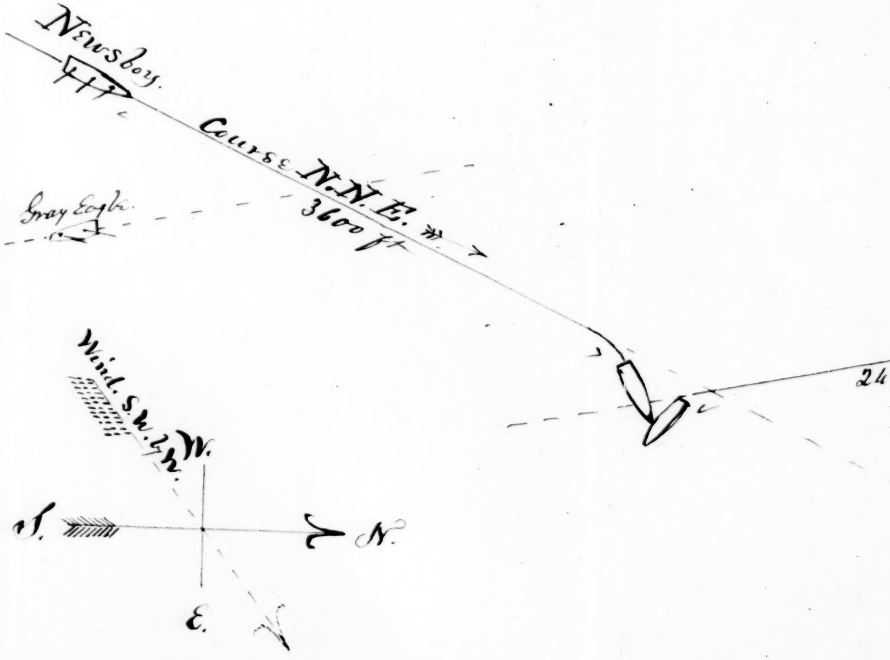
Proctor and Advocate for Coyne and White Cloud.

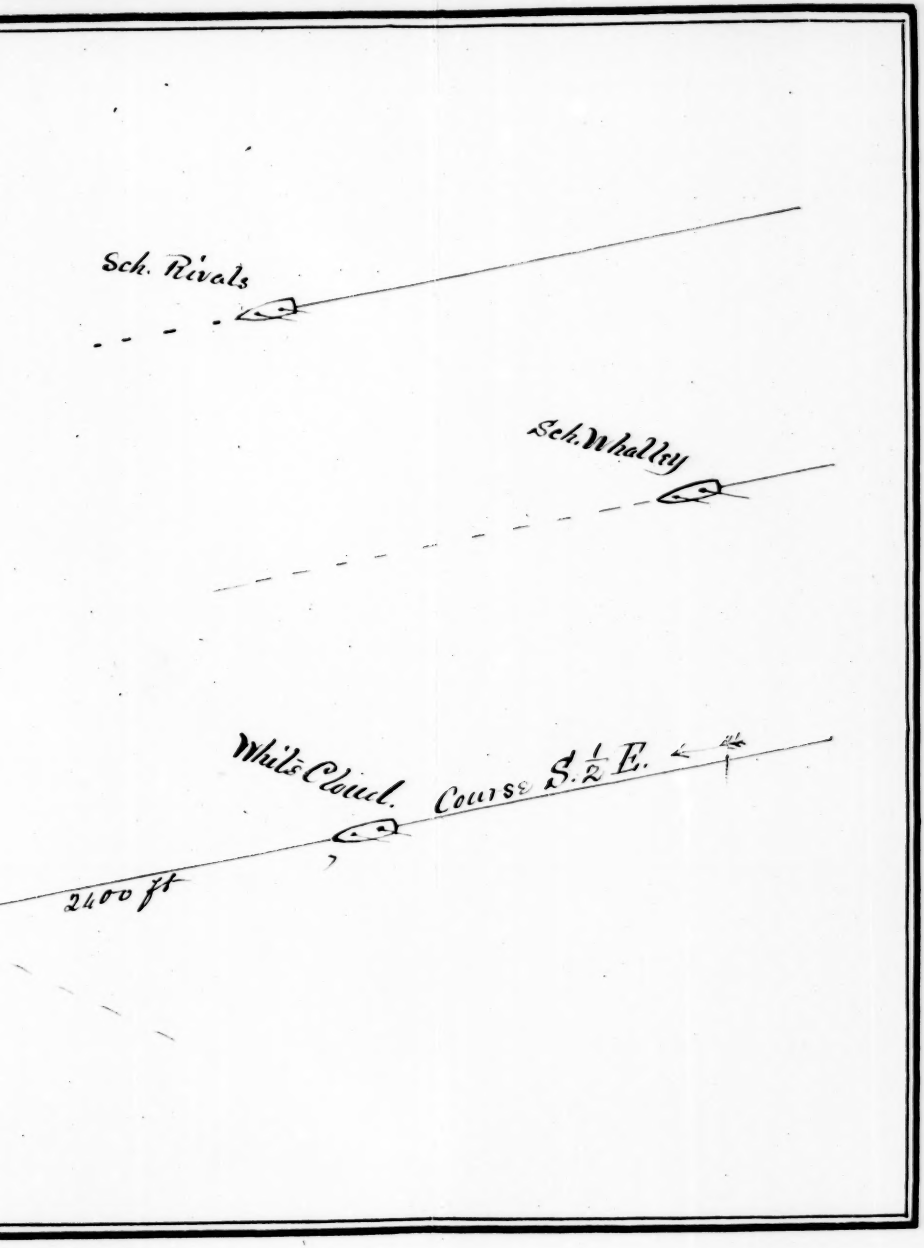
Cases No. 149. 150.
To accompany Brief of
John S. Newberry.

Diagram No 1.

Scale 1000 ft. to the inch.

Newsboy. & Whits Cloud 1 Mile Apart.




Sch. Rivals
Sch. Whalley
Whits Cloud. Course S. ½ E.
2400 ft